CUSTOMS BULLETIN AND DECISIONS

Weekly Compilation of

Decisions, Rulings, Regulations, Notices, and Abstracts

Concerning Customs and Related Matters of the

U.S. Customs Service

U.S. Court of Appeals for the Federal Circuit

and

U.S. Court of International Trade

VOL. 34 OCTOBER 18, 2000 NO. 41 & 42

This issue contains:

U.S. Customs Service

T.D. 00-64 Through 00-72

General Notice

DEPARTMENT OF THE TREASURY
U.S. CUSTOMS SERVICE

NOTICE

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Department of the Treasury

United States Customs Service

(T.D. 00-64)

CANCELLATION OF CUSTOMS BROKER LICENSES

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Broker License Cancellations

I, as Assistant Commissioner of Customs, Office of Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs brokers licenses due to the deaths of the license holders.

NAME	PORT	LICENSE NO.
Manuel A. Enciso	Nogales	01981
George Flandorffer, Jr.	New York	03598

BONNI G. TISCHLER
Assistant Commissioner
Office of Field Operations

DATE: September 27, 2000

(T.D. 00-65)

CANCELLATION OF CUSTOMS BROKER LICENSES

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Broker License Cancellations

I, as Assistant Commissioner, Office Field Operations, pursuant to section 641(f) Tariff Act of 1930, as amended (19 U.S.C. 1641(f)) and section 111.51(a) of the Customs Regulations (19 111.51(a)), hereby cancel the following Customs broker licenses without prejudice.

NAME	PORT	LICENSE NO.
Patricia L. Blasdel	Dallas	06335
Lancer International Corp.	Miami	12183
Meston and Brings, Inc.	Seattle	06060
Paul Joseph Moskowitz	San Francisco	03251
Hans Joerg Wintsch	San Francisco	04515

BONNI G. TISCHLER
Assistant Commissioner
Office of Field Operations

DATE: September 27, 2000

(T.D. 00-66)

RETRACTION OF REVOCATION NOTICE

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: General Notice

SUMMARY: The following Customs broker license numbers were erroneously included in a published list of revoked Customs broker licenses in the Federal Register.

Port	Name	License Number
Miami	Olaya Reynaldo	13732
Chicago	Tammie Krauskopf	14704

Licenses 13732 and 14704 are valid licenses.

BONNI G. TISCHLER
Assistant Commissioner
Office of Field Operations

DATE: September 27, 2000

19 CFR PARTS 10 AND 163

(T.D. 00-67)

RIN 1515-AC72

AFRICAN GROWTH AND OPPORTUNITY ACT AND GENERALIZED SYSTEM OF PREFERENCES

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for sub-Saharan Africa contained in Title I of the Trade and Development Act of 2000. The trade benefits under Title I, also referred to as the African Growth and Opportunity Act (the AGOA), apply to sub-Saharan African countries designated by the President and involve: the extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-textile articles normally excluded from GSP duty-free treatment that are not import-sensitive; and the entry of specific textile and apparel articles free of duty and free of any quantitative limits. The regulatory amendments contained in this document reflect and clarify the statutory standards for preferential treatment under the AGOA and also include specific documentary, procedural and other related requirements that must be met in order to obtain that treatment. Finally, this document also includes some interim amendments to the existing Customs Regulations implementing the GSP to conform those regulations to previous amendments to the GSP statute.

DATES: Interim rule effective October 1, 2000; comments must be submitted by December 4, 2000.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Operational issues: Cathy Sauceda, Office of Field Operations (202-927-4198). Legal issues regarding textiles: Cynthia Reese, Office of Regulations and Rulings (202-927-1361).

Other legal issues: Craig Walker, Office of Regulations and Rulings (202-927-1116).

SUPPLEMENTARY INFORMATION:

BACKGROUND

African Growth and Opportunity Act

On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the "Act"), Public Law 106-200, 114 Stat. 251. Title I of the Act concerns the extension of certain trade benefits to sub-Saharan Africa and is referred to in the Act as the "African Growth and Opportunity Act"(the "AGOA").

Subtitle A of Title I of the Act concerns trade policy for sub-Saharan Africa. Subtitle A is codified at 19 U.S.C. 3701-3706 and includes section 104 (19 U.S.C. 3703) which (1) authorizes the President to designate a sub-Saharan African country as an "eligible" sub-Saharan African country if the President determines that the country meets specified eligibility requirements and (2) requires that the President terminate a designation if the President determines that an eligible country is not making continual progress in meeting those requirements. Subtitle A also includes section 107 (19 U.S.C. 3706) which, for purposes of Title I, defines the terms "sub-Saharan Africa" and "sub-Saharan African country" and variations of those terms with reference to 48 listed countries.

Subtitle B of Title I of the Act concerns trade benefits under the AGOA. The provisions within Subtitle B to which this document relates are sections 111, 112 and 113.

Section 111

Subsection (a) of section 111 of the Act amends Title V of the Trade Act of 1974 (the Generalized System of Preferences, or GSP, statute which previously consisted of sections 501-507, codified at 19 U.S.C. 2461-2467) by inserting after section 506 a new section 506A entitled "Designation of sub-Saharan African countries for certain benefits" and codified at 19 U.S.C. 2466a.

Subsection (a) of new section 506A authorizes the President, subject to referenced eligibility requirements and criteria, to designate a country listed in section 107 of the Act as a beneficiary sub-Saharan African country eligible for the benefits described in subsection (b). This subsection (a) also requires that the President terminate a designation if the President determines that a beneficiary sub-Saharan African country is not making continual progress in meeting the requirements for designation.

Subsection (b) of new section 506A concerns preferential tariff treatment for certain articles and consists of the following two paragraphs:

1. Paragraph (1) authorizes the President to provide duty-free treatment for any article described in section 503(b)(1)(B) through (G) of the GSP statute that is the growth, product, or manufacture of a beneficiary sub-Saharan African country. A beneficiary sub-Saharan African country is a country listed in section 107 of the Act that has been

designated by the President as eligible under subsection (a) of new section 506A. The President is authorized to provide duty-free treatment for an article if, after receiving the advice of the International Trade Commission in accordance with section 503(e) of the GSP statute, the President determines that the article is not import-sensitive in the context of imports from beneficiary sub-Saharan African countries. The articles described in section 503(b)(1)(B) through (G) of the GSP statute are those that are normally excluded from duty-free treatment under the GSP and consist of the following:

a. Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

b. Import-sensitive electronic articles;

c. Import-sensitive steel articles;

d. Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

e. Import-sensitive semimanufactured and manufactured glass products; and

f. Any other articles which the President determines to be import-sensitive in the context of the GSP.

2. Paragraph (2) provides that the duty-free treatment under paragraph (1) will apply to any article described in that paragraph that meets the requirements of section 503(a)(2) (that is, the basic GSP origin and related rules). Paragraph (2) also makes application of those basic rules in this context subject to the following two additional rules:

a. If the cost or value of materials produced in the customs territory of the United States is included with respect to that article, an amount not to exceed 15 percent of the appraised value of the article at the time it is entered that is attributed to that United States cost or value may be applied toward determining the percentage referred to in subparagraph (A) of section 503(a)(2); and

b. The cost or value of the materials included with respect to that article that are produced in one or more beneficiary sub-Saharan African countries shall be applied in determining that percentage.

Thus, in order for an article described in paragraph (1) to receive duty-free treatment, that article must meet the basic origin and related rules that apply to all eligible articles from any GSP-eligible country, but subject to two additional rules. In other words, (1) the article must have become the growth, product, or manufacture of a beneficiary sub-Saharan African country by some process other than a simple combining or packaging operation or the mere dilution with water or the mere dilution with another substance that does not materially alter the characteristics of the article, (2) the article must be imported directly from a beneficiary sub-Saharan African country into

the customs territory of the United States, (3) the article must have at least 35 percent of its appraised value attributed to the sum of the direct costs of processing operations performed in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries that are members of the same association of countries and are treated as one country under section 507(2) of the GSP statute, plus the cost or value of the materials produced in the beneficiary sub-Saharan African country or in any two or more beneficiary sub-Saharan African countries, and (4) as variations from the general GSP 35 percent value-content rule (the two additional rules): the cumulation of the cost or value of materials from different beneficiary countries is not dependent on those beneficiaries being members of an association of countries; and the cost or value of materials produced in the customs territory of the United States (the 50 States and the District of Columbia and Puerto Rico) may be counted toward the 35 percent requirement to a maximum of 15 percent of the article's appraised value.

Subsection (c) of new section 506A defines the terms "beneficiary sub-Saharan African country" and "beneficiary sub-Saharan African countries" for purposes of the AGOA as a country or countries listed in section 107 of the Act that the President has determined is eligible under subsection (a) of new section 506A.

Subsection (b) of section 111 of the Act revises section 503(c)(2)(D) of the GSP statute in order to accommodate inclusion of a reference to "any beneficiary sub-Saharan African country." The effect of this amendment is to preclude the withdrawal of GSP duty-free treatment from a beneficiary sub-Saharan African country by application of the GSP competitive need limitation provisions. This amendment is not addressed in the regulatory changes set forth in this document.

It is noted that section 114 of the Act also amends the GSP statute by inserting after new section 506A another new section 506B (codified at 19 U.S.C. 2466b and entitled "Termination of benefits for sub-Saharan African countries") which provides for continuation of GSP duty-free treatment through September 30, 2008, in the case of a beneficiary sub-Saharan African country as defined in section 506A(c).

Section 112

Section 112 of the Act sets forth new rules that provide for the preferential treatment of certain textile and apparel products. These rules are codified at 19 U.S.C. 3721 and thus are outside the GSP statutory framework. Moreover, these rules in effect operate as an exception to the approach under the GSP because section 503(b)(1)(A) of the GSP statute excludes most textile and apparel articles from preferential (that is, duty-free) treatment under the GSP.

Subsection (a) of section 112 contains the basic preferential treatment statement. It provides that textile and apparel articles described in subsection (b) that are imported directly into the customs territory

of the United States from a beneficiary sub-Saharan African country described in section 506A(c) of the GSP statute shall enter the United States free of duty and free of any quantitative limitations in accordance with the provisions set forth in subsection (b), if the country has satisfied the requirements set forth in section 113 of the Act.

Subsection (b) of section 112 lists the specific textile and apparel products to which the preferential treatment described in subsection (a) applies. These products are as follows:

1. Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the Harmonized Tariff Schedule of the United States (HTSUS) and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS [paragraph (b)(1)(A)];

2. Apparel articles assembled in one or more beneficiary sub-Saharan African countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes [paragraph (b)(1)(B)];

3. Apparel articles cut in one or more beneficiary sub-Saharan African countries from fabric wholly formed in the United States from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States) if those articles are assembled in one or more beneficiary sub-Saharan African countries with thread formed in the United States [paragraph (b)(2)];

4. Apparel articles wholly assembled in one or more beneficiary sub-Saharan African countries from fabric wholly formed in one or more beneficiary sub-Saharan African countries from yarn originating either in the United States or one or more beneficiary sub-Saharan African countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in one or more beneficiary sub-Saharan African countries), subject to rules or conditions involving (1) application of quantitative limits on preferential treatment (in effect, tariff rate quotas) for each of eight 1-year periods beginning on October 1, 2000, with a percentage increase in each year, (2) subject to those tariff rate quota provisions and until September 30, 2004, application of preferential treatment to apparel articles wholly assembled in one

or more lesser developed beneficiary sub-Saharan African countries regardless of the country of origin of the fabric used to make the articles, and (3) application of an import surge safeguard mechanism that could lead to suspension by the President of duty-free treatment for an article if increased imports of that article cause serious damage, or the threat of serious damage, to a domestic industry producing a like or directly competitive article [paragraph (b)(3)];

5. Cashmere sweaters, that is, sweaters in chief weight of cashmere, knit-to-shape in one or more beneficiary sub-Saharan African countries and classifiable under subheading 6110.10 of the HTSUS [paragraph (b)(4)(A)];

6. Wool sweaters containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary sub-Saharan African countries [paragraph (b)(4)(B)];

7. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, underAnnex 401 to the North American Free Trade Agreement (NAFTA). (This AGOA provision in effect applies to apparel articles which are originating goods, and thus are entitled to preferential duty treatment, under the NAFTA tariff shift and related rules based on the fact that the fabrics or yarns used to produce them were determined to be in short supply in the context of the NAFTA. The subject fabrics and yarns include fine count cotton knitted fabrics for certain apparel, linen, silk, cotton velveteen, fine wale corduroy, Harris Tweed, certain woven fabrics made with animal hairs, certain lightweight, high thread count poly-cotton woven fabrics, and certain lightweight, high thread count broadwoven fabrics used in the production of men's and boys' shirts-see House Report 106-606, 106th Congress, 2d Session, at page 77.) [paragraph (b)(5)(A)];

8. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary sub-Saharan African countries, from fabric or yarn that is not formed in the United States or a beneficiary sub-Saharan African country and that is not described in paragraph (b)(5)(A), to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under paragraph (b)(5)(A) [paragraph (b)(5)(B)]; and

9. A handloomed, handmade, or folklore article of a beneficiary sub-Saharan African country or countries that is certified as such by the competent authority of the beneficiary country or countries, subject to a determination by the President regarding which, if any, particular textile and apparel goods of the country or countries will be treated as being handloomed, handmade, or folklore articles [paragraph (b)(6)].

Subsection (c) of section 112 concerns the elimination of existing

quotas on textile and apparel articles imported into the United States from Kenya and Mauritius. This provision is not addressed in the regulatory changes set forth in this document.

Subsection (d) of section 112 sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under section 112. These special rules are as follows:

1. Paragraph (d)(1)(A) sets forth a general rule regarding the treatment of findings and trimmings. It provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if the value of those foreign findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and used in the production of brassieres), zippers (including zipper tapes), and labels. However, as an exception to the paragraph (d)(1)(A) general rule, paragraph (d)(1)(C) provides that sewing thread will not be treated as findings or trimmings in the case of an article described in paragraph (b)(2) of section 112 (because that paragraph specifies that the thread used in the assembly of the article must be formed in the United States and thus cannot be of "foreign" origin).

2. Paragraph (d)(1)(B) sets forth a general rule regarding the treatment of specific interlinings, that is, a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. The paragraph also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Finally, paragraph (d)(2) sets forth a *de minimis* rule which provides that an article otherwise eligible for preferential treatment under section 112 will not be ineligible for that treatment because the article contains fibers or yarns not wholly formed in the United States or one or more beneficiary sub-Saharan African countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

Subsection (e) of section 112 defines certain terms for purposes of sections 112 and 113 of the Act and, in paragraph (e)(2), states that the terms "beneficiary sub-Saharan African country" and "beneficiary sub-Saharan African countries" have the same meaning as those terms have under new section 506A(c) discussed above.

Finally, subsection (f) of section 112 provides that section 112 takes

effect on October 1, 2000, and will remain in effect through September 30, 2008.

Section 113

Section 113 of the Act sets forth standards and conditions for the designation of beneficiary sub-Saharan African countries and for the granting of preferential treatment to textile and apparel articles under section 112. These provisions are primarily intended to avoid transshipment situations and thus ensure that preferential treatment is applied to goods as intended by Congress.

Subsection (a) of section 113 sets forth various terms and conditions that a potential beneficiary sub-Saharan African country must meet for purposes of preferential treatment under section 112. These terms and conditions involve enforcement and related actions to be taken by, and within, those potential beneficiary sub-Saharan African countries and thus, except in the case of paragraphs (a)(1)(F) and (a)(2), do not relate to matters that require regulatory action in this document. Paragraph (a)(1)(F) requires a country to agree to report, on a timely basis, at the request of the U.S. Customs Service, documentation establishing the country of origin of covered articles as used by that country in implementing an effective visa system. For purposes of paragraph (a)(1)(F), paragraph (a)(2) states that documentation regarding the country of origin of the covered articles includes documentation such as production records, information relating to the place of production, the number and identification of the types of machinery used in production, the number of workers employed in production, and certification from both the manufacturer and the exporter.

Subsection (b) of section 113 sets forth regulatory standards for purposes of preferential treatment under section 112, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each beneficiary sub-Saharan African country, prescribes a penalty that the President must impose on an exporter if the President determines that the exporter has engaged in transshipment, specifies when "transshipment" occurs for purposes of the subsection, and sets forth responsibilities of Customs regarding monitoring and reporting to Congress on actions taken by countries in sub-Saharan Africa. The specific provisions under subsection (b) that require regulatory treatment in this document are the following:

1. Paragraph (b)(1)(A) provides that any importer that claims preferential treatment under section 112 must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (b)(1)(A) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originat-

ing good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (b)(2) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (b)(1)(A) will not be required in the case of an article imported under section 112 if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Finally, subsection (c) of section 113 requires Customs to provide technical assistance to the beneficiary sub-Saharan African countries and to send production verification teams to at least four beneficiary sub-Saharan African countries each year, and subsection (d) of section 113 contains an appropriation authorization to carry out these duties. These provisions are not addressed in the regulatory changes set forth in this document.

Other Changes to the GSP Program

Section 226 of the Customs and Trade Act of 1990 (Public Law 101-382, 104 Stat. 660) amended section 503 of the GSP statute (19 U.S.C. 2463) in order to include explicit country of origin language in the statutory text. The amendments involved (1) inclusion of a reference to an eligible article which is "the growth, product, or manufacture" of a beneficiary developing country, (2) inclusion of a requirement that the implementing regulations promulgated by the Secretary of the Treasury provide that, in order to be eligible for duty-free treatment, an article must be "wholly the growth, product, or manufacture of a beneficiary developing country, or must be a new or different article of commerce which has been grown, produced, or manufactured in the beneficiary developing country," and (3) inclusion of a limitation on the conferring of origin for purposes of duty-free treatment in the case of simple combining or packaging operations or the mere dilution with water or the mere dilution with another substance that does not materially alter the characteristics of the article. The Customs Regulations implementing the GSP were originally published in 1975 and were never amended to reflect the 1990 statutory amendments. This document therefore sets forth conforming regulatory amendments for this purpose.

In addition, in Proclamation 6942 of October 17, 1996 (published in the **Federal Register** at 61 FR 54719 on October 21, 1996), President Clinton amended the GSP in a number of respects. One of those changes involved the termination of the designation of Malaysia both as a beneficiary developing country for purposes of the GSP and as a member of the Association of South East Asian Nations for purposes of the GSP. Section 10.175 of the Customs Regulations (19 CFR 10.175)

sets forth standards for the GSP direct importation requirement and, in paragraph (e)(1), permits shipment, with some restrictions, from a member of an association designated for GSP purposes through a former beneficiary developing country whose designation as a member of that same association for GSP purposes was terminated by the President; paragraph (e)(2) of that section lists three former beneficiary developing countries whose designation was terminated as described in paragraph (e)(1). This document adds Malaysia to that paragraph (e)(2) list.

Finally, Customs notes that §§ 10.171(a), 10.175(e), and 10.176(c) of the Customs Regulations contain out-of-date references to various GSP statutory provisions. This document conforms those references to the current GSP statute.

SECTION-BY-SECTION DISCUSSION OF INTERIM AMENDMENTS

Section 10.171

The amendment of this section involves an amendment of the first sentence of paragraph (a) to reflect the correct codification of the GSP statute.

Section 10.175

The amendments of this section involve (1) corrections to various GSP statutory citations in paragraphs (e)(1) and (e)(2), and (2) the addition of Malaysia to the list of countries in paragraph (e)(2) to reflect the action taken by the President in Proclamation 6942 as discussed above.

Section 10.176

The amendments to this section include the revision of paragraph (a) to reflect the changes to the GSP statute previously made by section 226 of the Customs and Trade Act of 1990 as discussed above. It is noted that the amended GSP statutory text regarding the basic rules of origin closely follows the wording of the corresponding Caribbean Basin Initiative (CBI) statutory text (section 213(a)(1) and (2) of the Caribbean Basin Economic Recovery Act (CBERA), codified at 19 U.S.C. 2703(a)(1) and (2)), and the legislative history relating to section 226 clearly indicates that the CBI statute was the model for this change to the GSP statute (see House Report 101-650, 101st Congress, 2d Session, at page 137). Accordingly, revised paragraph (a) of § 10.176 as set forth in this document follows the corresponding CBI regulatory provision (§ 10.195(a) of the Customs Regulations, 19 CFR 10.195(a)) but with appropriate textual variations to reflect a GSP context. It should also be noted that in the revised GSP text (1) reference is no longer made to merchandise which is the "assembly" of a beneficiary developing country because, similar to the CBI, that term is not used in the statute and in any event is covered by the phrase "growth, product, or manufacture," and (2) the reference to the "imported di-

rectly" requirement has not been retained because that requirement is already separately and adequately addressed in § 10.175 (this does not modify the GSP imported directly requirement).

In addition, paragraph (c) of this section is amended to correct an out-of-date reference to a provision within the GSP statute.

New § 10.178a

This section is intended to cover the preferential tariff treatment provisions of subsection (b) of new section 506A of the GSP statute.

Paragraphs (a) and (b) of the regulatory text reflect the terms of section 506A(b)(1). Paragraph (a) sets the statutory context for the section and paragraph (b) describes the designation authority of the President and lists the articles that may be designated for duty-free treatment.

Paragraph (c) specifies the manner in which a claim for duty-free treatment under the section should be made. It follows the procedure specified in § 10.172 of the GSP regulations but provides for use of the symbol "D" (rather than "A") as the special program indicator on the entry.

Paragraph (d) of the regulatory text reflects the rules of origin principles contained in section 506A(b)(2). In order to avoid unnecessary duplication of regulatory text, and in consideration of the fact that the statute provides for application of the GSP origin and related rules in this context (subject to two exceptions in the case of the 35 percent value content requirement), paragraph (d) provides for application of the relevant existing GSP regulatory provisions (that is, §§ 10.171, 10.173, and 10.175 through 10.178) but with certain specified exceptions or variations to conform to the AGOA context.

New §§ 10.211 through 10.217

These new sections are intended to implement those textile and apparel preferential treatment provisions within sections 112 and 113 of the Act that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations.

Section 10.211 outlines the statutory context for the new sections and is self-explanatory.

Section 10.212 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of "apparel articles," by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of "assembled in one or more beneficiary countries" is based in part on the definition of "wholly assembled" in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)) but also adds a reference to thread as a material that is not considered to be a

component for purposes of the definition. In addition, the definition is intended to allow a prior partial assembly in the United States, consistent with the overall structure of the AGOA as reflected in the types of operations allowed under the program.

3. The definition of "cut in one or more beneficiary countries" precludes any cutting operation performed in a country other than a beneficiary country in accordance with the clear language of the statute.

4. The definition of "knit-to-shape" follows the definition in § 102.21(b)(3) of the Customs Regulations (19 CFR 102.21(b)(3)).

5. The definition of "major parts" is taken from the definition in § 102.21(b)(4) of the Customs Regulations (19 CFR 102.21(b)(4)).

6. The definition of "NAFTA" reflects the definition contained in section 112(e)(3) of the Act.

7. The definition of "originating" refers to the Customs Regulations that implement section 334 of the Uruguay Round Agreements Act and therefore is consistent with the intent of Congress (see House Report 106-606, 106th Congress, 2d Session, at page 77).

8. The definition of "wholly assembled in" is intended to ensure, consistent with the wording of the statute and the clear meaning of "wholly" in this context, that all assembly operations (including any initial partial assembly or any tail-end assembly operation) will be performed in the countries that are the intended beneficiaries of the AGOA program.

9. The definition of "wholly formed" relies in part on the definition of "fabric-making process" in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)) and also uses a similar approach for yarns and thread because the Act uses these terms with reference to fabrics, yarns, and thread. The definition is intended to ensure that all processes essential for yarn or thread or fabric formation are performed in the United States or beneficiary countries.

Section 10.213 identifies the specific articles to which preferential treatment applies under section 112 of the Act. Paragraph (a) repeats the "imported directly" requirement of section 112(a) of the Act and identifies the various types of articles described within sections 112(b)(1)-(6) of the Act. Paragraph (b) covers the special rules for findings, trimmings, and interlinings and the *de minimis* rule contained in section 112(d) of the Act. Paragraph (c) explains what is meant by "imported directly." The following specific points are noted regarding these regulatory texts:

1. With regard to paragraph (a)(2), which corresponds to section 112(b)(1)(B) of the Act, Customs notes that the statutory provision does not address the issue of whether the embroidery or stone-washing and other processes mentioned in that provision (which are principally finishing operations normally done after assembly) must be done in beneficiary countries. The relevant legislative history does not address the issue. The statute could be read to allow these processes to be done in a non-beneficiary country provided that, after these processes are completed, the article is returned to a beneficiary country

for direct importation into the United States. However, Customs believes that this interpretation would lead to a result that is contrary to the Congressional statement of policy set forth in section 103 of the Act which mentions, among other things, the encouragement of increased trade and investment between the United States and sub-Saharan Africa and the strengthening and expansion of the private sector in sub-Saharan Africa, because it could have the effect of diverting those finishing operations to third countries and thus away from the intended beneficiaries under the Act. Customs has determined that limiting the performance of those processes to beneficiary countries would further the stated policy of Congress and would be more consistent with the intent of the Act. Accordingly, in paragraph (a)(2) of the regulatory text, the words "in a beneficiary country" have been added at the end after "processes."

2. In paragraph (a)(3), which corresponds to section 112(b)(2) of the Act, no comma has been included before the parenthetical expression and a comma has been added after that parenthetical expression, in order to correct an apparent inadvertent drafting or printing error and thus ensure proper grammatical sense (this makes the regulatory text consistent with a corresponding statutory text set forth under section 211 of the Act, which is not the subject of this document).

3. In paragraph (a)(7), which corresponds to section 112(b)(4)(B) of the Act, no mention is made of "merino" wool because, notwithstanding the use of this word in the heading of the statutory provision, Customs interprets the statutory language as reflecting the intent of Congress to set a maximum (18.5 micron) diameter limitation without regard to the type of animal from which the wool was obtained.

4. In paragraph (a)(9), which corresponds to section 112(b)(5)(B) of the Act, no reference has been made at the end to treatment provided "for yarns or fabrics" because treatment in this context must be read in the context of section 112(b)(5)(A) of the Act and therefore can only have reference to articles made from yarns or fabric.

5. Paragraph (b) is divided into two parts: Paragraph (b)(1) reflects the basic rules of section 112(d) of the Act and paragraph (b)(2) is intended to clarify the relationship between findings and trimmings on the one hand and fibers and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under section 112(d). As regards paragraph (b)(2), Customs believes that some clarification is appropriate in this context because sometimes a fiber or yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign fibers or yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (b)(2) a foreign yarn, for example, that is

used in an article as a trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation. In addition, the following is noted regarding the paragraph (b) texts:

a. In paragraph (b)(1)(i) the words "and zippers, including zipper tapes and labels" in section 112(d)(1)(A) of the Act have been replaced with the words "zippers (including zipper tapes), labels" because there is no such thing as a "zipper label" and to ensure proper treatment of labels as findings and trimmings in their own right. Customs believes that this wording of the regulatory text is consistent with the intent of Congress as reflected in the explanation of the provision in the relevant legislative history (see House Report 106-606, 106th Congress, 2d Session, at page 79); and

b. A separate paragraph (b)(1)(iii) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words "(and any findings and trimmings)" in section 112(d)(1)(B)(i) of the Act.

6. The explanation of "imported directly" in paragraph (c) is consistent with current regulatory practice. The text follows that used in the Caribbean Basin Initiative (CBI) implementing regulations (see 19 CFR 10.193) rather than the text used in the corresponding GSP regulation (19 CFR 10.175) because the CBI text allows for contributions from multiple beneficiary countries without affecting compliance with the imported directly requirement and thus is more appropriate for the production scenarios permitted under section 112(b) of the Act.

Section 10.214 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in section 113(b)(1)(A) of the Act. Paragraph (a) contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific articles described in section 112(b) of the Act and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA which involves different country of origin standards for preferential duty treatment. Paragraph (c) sets forth instructions for preparation of the Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the AGOA program.

Section 10.215 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in section 113(b)(1)(A) of the Act for procedures "similar in all material respects to the requirements of Article 502(1) of the NAFTA," this regulatory text is based on the NAFTA regulatory text contained in 19 CFR 181.21, but

includes appropriate changes to conform to the current context. However, contrary to the NAFTA regulatory text, paragraph (a) of § 10.215 does not allow for a declaration based on a copy of an original Certificate of Origin.

Section 10.216 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to Athe provisions of part 163" which sets forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. The effect is the same as that under the NAFTA § 181.22 text.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1) of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for AGOA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of section 113(b)(2) of the Act, this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Finally, section 10.217 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)) and in the CBI regulations (19 CFR 10.198(c)), the text expands on the GSP/CBI approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the Customs Regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production in a beneficiary country that Customs may need to review for purposes of verifying a claim for preferential treatment. This paragraph is based on the specifics regarding country of origin documentation contained in section 113(a)(2) of the Act.

3. Finally, paragraph (a)(3) refers to evidence in a beneficiary country to document the use of U.S. materials in an article produced in the beneficiary country, because the presence of U.S. materials is a key element for many of the articles to which preferential treatment applies under the AGOA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained by the beneficiary country producer not only with regard to the production process but also with regard to the source of the materials used in that production.

Appendix to Part 163

Finally, this document amends Part 163 of the Customs Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim "(a)(1)(A) list") a reference to the Certificate of Origin and supporting documentation prescribed under new §10.216.

Comments

Before adopting this interim regulation as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.

Inapplicability of Notice and Delayed Effective Date Requirements and the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the African Growth and Opportunity Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

Executive Order 12866

This document does not meet the criteria for a "significant regula-

tory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515-0224.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these interim regulations is in §§ 10.214, 10.215, and 10.216. This information conforms to requirements in 19 U.S.C. 3722(b)(1)(A) and is used by Customs to determine whether textile and apparel articles imported from designated beneficiary sub-Saharan African countries are entitled to duty-free entry under the African Growth and Opportunity Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated annual reporting and/or recordkeeping burden: 10,400 hours.

Estimated average annual burden per respondent/recordkeeper: 23 hours.

Estimated number of respondents and/or recordkeepers: 440.

Estimated annual frequency of responses: on occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Office

of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

List of Subjects

19 CFR Part 10

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and inspection, Exports, Generalized System of Preferences, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Amendments to the Regulations

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.171 through 10.178 is revised to read, and a new specific authority citation for §§ 10.211 through 10.217 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.171 through 10.178a also issued under 19 U.S.C. 2461 *et seq.*;

* * * * *

Sections 10.211 through 10.217 also issued under 19 U.S.C. 3721;

* * * * *

2. In § 10.171, the first sentence of paragraph (a) is amended by removing the reference "(19 U.S.C. 2461-2465)" and adding, in its place, the reference "(19 U.S.C. 2461-2467)".

3. In § 10.175:

a. Paragraph (e)(1) is amended by removing the words "section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3))" and adding, in their place, the words "section 507(2), Trade Act of 1974, as

amended (19 U.S.C. 2467(2))" and by removing the words "section 504, Trade Act of 1974, as amended (19 U.S.C. 2464)" and adding, in their place, the words "section 502(d), Trade Act of 1974, as amended (19 U.S.C. 2462(d))"; and

b. Paragraph (e)(2) is amended by removing the words "section 504 of the Trade Act of 1974 (19 U.S.C. 2464)" and adding, in their place, the words "section 502(d) of the Trade Act of 1974 (19 U.S.C. 2462(d))" and by adding "Malaysia" in appropriate alphabetical order in the list of countries at the end of the paragraph.

4. In § 10.176, paragraph (a) is revised, and paragraph (c) is amended by removing the words "section 502(a)(3) of the Trade Act of 1974 as amended (19 U.S.C. 2462(a)(3))" and adding, in their place, the words "section 507(2) of the Trade Act of 1974 (19 U.S.C. 2467(2))". The revision of paragraph (a) reads as follows:

§ 10.176 Country of origin criteria.

(a) *Merchandise produced in a beneficiary developing country or any two or more countries which are members of the same association of countries*-(1) *General.* Except as otherwise provided in this section, any article which either is wholly the growth, product, or manufacture of, or is a new or different article of commerce that has been grown, produced, or manufactured in, a beneficiary developing country may qualify for duty-free entry under the Generalized System of Preferences (GSP). No article will be considered to have been grown, produced, or manufactured in a beneficiary developing country by virtue of having merely undergone simple (as opposed to complex or meaningful) combining or packaging operations or mere dilution with water or mere dilution with another substance that does not materially alter the characteristics of the article. Duty-free entry under the GSP may be accorded to an article only if the sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries that are members of the same association of countries and are treated as one country under section 507(2) of the Trade Act of 1974, as amended (19 U.S.C. 2467(2)), plus the direct costs of processing operations performed in the beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time it is entered.

(2) *Combining, packaging, and diluting operations.* No article which has undergone only a simple combining or packaging operation or a mere dilution in a beneficiary developing country within the meaning of paragraph (a)(1) of this section will be entitled to duty-free treatment even though the processing operation causes the article to meet the value requirement set forth in that paragraph. For purposes of this section:

(i) Simple combining or packaging operations and mere dilution include, but are not limited to, the following:

(A) The addition of batteries to devices;

(B) Fitting together a small number of components by bolting, glueing,

soldering, etc.;

(C) Blending foreign and beneficiary developing country tobacco;

(D) The addition of substances such as anticaking agents, preservatives, wetting agents, etc.;

(E) Repacking or packaging components together;

(F) Reconstituting orange juice by adding water to orange juice concentrate; and

(G) Diluting chemicals with inert ingredients to bring them to standard degrees of strength;

(ii) Simple combining or packaging operations and mere dilution will not be taken to include processes such as the following:

(A) The assembly of a large number of discrete components onto a printed circuit board;

(B) The mixing together of two bulk medicinal substances followed by the packaging of the mixed product into individual doses for retail sale;

(C) The addition of water or another substance to a chemical compound under pressure which results in a reaction creating a new chemical compound; and

(D) A simple combining or packaging operation or mere dilution coupled with any other type of processing such as testing or fabrication (for example, a simple assembly of a small number of components, one of which was fabricated in the beneficiary developing country where the assembly took place); and

(iii) The fact that an article has undergone more than a simple combining or packaging operation or mere dilution is not necessarily dispositive of the question of whether that processing constitutes a substantial transformation for purposes of determining the country of origin of the article.

* * * * *

5. A new § 10.178a is added to read as follows:

§ 10.178a Special duty-free treatment for sub-Saharan African countries.

(a) *General.* Section 506A of the Trade Act of 1974 (19 U.S.C. 2466a) authorizes the President to provide duty-free treatment for certain articles otherwise excluded from duty-free treatment under the Generalized System of Preferences (GSP) pursuant to section 503(b)(1)(B) through (G) of the Trade Act of 1974 (19 U.S.C. 2463(b)(1)(B) through (G)) and authorizes the President to designate a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) as an eligible beneficiary sub-Saharan African country for purposes of that duty-free treatment.

(b) *Eligible articles.* The duty-free treatment referred to in paragraph (a) of this section will apply to any article within any of the following classes of articles, provided that the article in question has

been designated by the President for that purpose and is the growth, product, or manufacture of an eligible beneficiary sub-Saharan African country and meets the requirements specified or referred to in paragraph (d) of this section:

(1) Watches, except those watches entered after June 30, 1989, that the President specifically determines, after public notice and comment, will not cause material injury to watch or watch band, strap, or bracelet manufacturing and assembly operations in the United States or the United States insular possessions;

(2) Certain electronic articles;

(3) Certain steel articles;

(4) Footwear, handbags, luggage, flat goods, work gloves, and leather wearing apparel which were not eligible articles for purposes of the GSP on January 1, 1995, as the GSP was in effect on that date;

(5) Certain semimanufactured and manufactured glass products; and

(6) Any other articles which the President determines to be import-sensitive in the context of the GSP.

(c) *Claim for duty-free treatment.* A claim for the duty-free treatment referred to in paragraph (a) of this section must be made by placing on the entry document the symbol "D" as a prefix to the subheading of the Harmonized Tariff Schedule of the United States for each article for which duty-free treatment is claimed;

(d) *Origin and related rules.* The provisions of §§ 10.171, 10.173, and 10.175 through 10.178 will apply for purposes of duty-free treatment under this section. However, application of those provisions in the context of this section will be subject to the following rules:

(1) The term "beneficiary developing country," wherever it appears, means "beneficiary sub-Saharan African country;"

(2) In the GSP declaration set forth in § 10.173(a)(1)(i), the column heading "Materials produced in a beneficiary developing country or members of the same association" should read "Material produced in a beneficiary sub-Saharan African country or in the U.S.;"

(3) The provisions of §10.175(c) will not apply; and

(4) For purposes of determining compliance with the 35 percent value content requirement set forth in § 10.176(a):

(i) An amount not to exceed 15 percent of the appraised value of the article at the time it is entered may be attributed to the cost or value of materials produced in the customs territory of the United States, and the provisions of § 10.177 will apply for purposes of identifying materials produced in the customs territory of the United States and the cost or value of those materials; and

(ii) The cost or value of materials included in the article that are produced in more than one beneficiary sub-Saharan African country may be applied without regard to whether those countries are members of the same association of countries.

(e) *Importer requirements.* In order to make a claim for duty-free treatment under this section, the importer:

(1) Must have records that explain how the importer came to the

conclusion that the article qualifies for duty-free treatment;

(2) Must have records that demonstrate that the importer is claiming that the article qualifies for duty-free treatment because it is the growth of a beneficiary sub-Saharan African country or because it is the product of a beneficiary sub-Saharan African country or because it is the manufacture of a beneficiary sub-Saharan African country. If the importer is claiming that the article is the growth of a beneficiary sub-Saharan African country, the importer must have records that indicate that the product was grown in that country, such as a record of receipt from a farmer whose crops are grown in that country. If the importer is claiming that the article is the product of, or the manufacture of, a beneficiary sub-Saharan African country, the importer must have records that indicate that the manufacturing or processing operations reflected in or applied to the article meet the country of origin rules set forth in § 10.176(a) and paragraph (d) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose;

(3) Must establish and implement internal controls which provide for the periodic review of the accuracy of the declarations or other records referred to in paragraph (e)(2) of this section;

(4) Must have shipping papers that show how the article moved from the beneficiary sub-Saharan African country to the United States. If the imported article was shipped through a country other than a beneficiary sub-Saharan African country and the invoices and other documents from the beneficiary sub-Saharan African country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.175(d)(1) through (3) were met;

(5) Must have records that demonstrate the cost or value of the materials produced in the United States and the cost or value of the materials produced in a beneficiary sub-Saharan African country or countries and the direct costs of processing operations incurred in the beneficiary sub-Saharan African country that were relied upon by the importer to determine that the article met the 35 percent value content requirement set forth in § 10.176(a) and paragraph (c) of this section. A properly completed GSP declaration in the form set forth in § 10.173(a)(1) is one example of a record that would serve this purpose; and

(6) Must be prepared to produce the records referred to in paragraphs (e)(1), (e)(2), (e)(4), and (e)(5) of this section within 30 days of a request from Customs and must be prepared to explain how those records and the internal controls referred to in paragraph (e)(3) of this section justify the importer's claim for duty-free treatment.

6. Part 10 is amended by adding a new center heading followed by new §§ 10.211 through 10.217 to read as follows:

TEXTILE AND APPAREL ARTICLES UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT

Sec.
10.211 Applicability.
10.212 Definitions.
10.213 Articles eligible for preferential treatment.
10.214 Certificate of Origin.
10.215 Filing of claim for preferential treatment.
10.216 Maintenance of records and submission of Certificate by importer.
10.217 Verification and justification of claim for preferential treatment.

TEXTILE AND APPAREL ARTICLES UNDER THE AFRICAN GROWTH AND OPPORTUNITY ACT

§ 10.211 Applicability.

Title I of Public Law 106-200 (114 Stat. 251), entitled the African Growth and Opportunity Act (AGOA), authorizes the President to extend certain trade benefits to designated countries in sub-Saharan Africa. Section 112 of the AGOA, codified at 19 U.S.C. 3721, provides for the preferential treatment of certain textile and apparel articles from beneficiary countries. The provisions of §§ 10.211-10.217 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to section 112.

§ 10.212 Definitions.

When used in §§ 10.211 through 10.217, the following terms have the meanings indicated:

Apparel articles. "Apparel articles" means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more beneficiary countries. "Assembled in one or more beneficiary countries" when used in the context of a textile or apparel article has reference to a joining together of two or more components (other than thread, decorative embellishments, buttons, zippers, or similar components) that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

Beneficiary country. "Beneficiary country" means a country listed in section 107 of the African Growth and Opportunity Act (19 U.S.C. 3706) which has been the subject of a finding by the President, published in the FEDERAL REGISTER, that the country has satisfied the requirements of section 113 of the African Growth and Opportunity Act (19 U.S.C. 3722) and which the President has designated as a beneficiary sub-Saharan African country under section 506A of the Trade Act of 1974 (19 U.S.C. 2466a).

Cut in one or more beneficiary countries. "Cut in one or more beneficiary countries" when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more beneficiary countries.

Foreign. "Foreign" means of a country other than the United States

or a beneficiary country.

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

Knit-to-shape. The term "knit-to-shape" applies to any apparel article of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is "knit-to-shape."

Major parts. "Major parts" means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

NAFTA. "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Originating. "Originating" means having the country of origin determined by application of the provisions of § 102.21 of this chapter.

Preferential treatment. "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative limitations as provided in 19 U.S.C. 3721.

Wholly assembled in. When used with reference to a textile or apparel article in the context of one or more beneficiary countries or one or more lesser developed beneficiary countries, the expression "wholly assembled in" means that all of the components of the textile or apparel article (including thread, decorative embellishments, buttons, zippers, or similar components) were joined together in one or more beneficiary countries or one or more lesser developed beneficiary countries.

Wholly formed. "Wholly formed," when used with reference to yarns or thread, means that all of the production processes, starting with the extrusion of filament or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

§ 10.213 Articles eligible for preferential treatment.

(a) *General*. The preferential treatment referred to in § 10.211 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a beneficiary country:

(1) Apparel articles assembled in one or more beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of

the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles assembled in one or more beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a beneficiary country;

(3) Apparel articles cut in one or more beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more beneficiary countries with thread formed in the United States;

(4) Apparel articles wholly assembled in one or more beneficiary countries from fabric wholly formed in one or more beneficiary countries from yarn originating either in the United States or one or more beneficiary countries (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in one or more beneficiary countries);

(5) Apparel articles wholly assembled in one or more lesser developed beneficiary countries regardless of the country of origin of the fabric used to make the articles;

(6) Sweaters, in chief weight of cashmere, knit-to-shape in one or more beneficiary countries and classifiable under subheading 6110.10 of the HTSUS;

(7) Sweaters, containing 50 percent or more by weight of wool measuring 18.5 microns in diameter or finer, knit-to-shape in one or more beneficiary countries;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabric or yarn that is not formed in the United States or a beneficiary country, to the extent that apparel articles of those fabrics or yarns would be eligible for preferential treatment, without regard to the source of the fabric or yarn, under Annex 401 to the NAFTA;

(9) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more beneficiary countries, from fabric or yarn that is not formed in the United States or a beneficiary country and that is not described in paragraph (a)(8) of this section, to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the preferential treatment pro-

vided under paragraph (a)(8) of this section; and

(10) A handloomed, handmade, or folklore article of a beneficiary country or countries that is certified as a handloomed, handmade, or folklore article by the competent authority of the beneficiary country or countries, provided that the President has determined that the article in question will be treated as being a handloomed, handmade, or folklore article.

(b) *Special rules for certain component materials*-(1) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.211 because the article contains:

(i) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "findings and trimmings" include, but are not limited to, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(ii) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "interlinings" include only a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(iii) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(iv) Fibers or yarns not wholly formed in the United States or one or more beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article.

(2) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (b)(1)(i) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (b)(1) of this section.

(c) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any beneficiary country to the United States without passing through the territory of any non-beneficiary country;

(2) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, the articles in the shipment do not enter into the commerce of any non-beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United

States as the final destination; or

(3) If the shipment is from any beneficiary country to the United States through the territory of any non-beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.214 Certificate of Origin.

(a) General. A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.211. The Certificate of Origin must be prepared by the exporter in the beneficiary country in the form specified in paragraph (b) of this section. Where the beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

African Growth and Opportunity Act
Textile Certificate of Origin

1. Exporter Name & Address		2. Producer Name & Address
3. Importer Name & Address		6. U.S./African Fabric Producer Name & Address
4. Description of Article	5. Preference Group	7. U.S./African Yarn Producer Name & Address
		8. U.S. Thread Producer Name & Address
		9. Name of Handloomed, Handmade, or Folklore Article
10. Name of Preference Group H Fabric or Yarn:		

Preference Groups:

A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(1)].
B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.213(a)(2)].
C: Apparel cut and assembled from U.S. fabric from U.S. yarn and thread [19 CFR 10.213(a)(3)].
D: Apparel assembled from regional fabric from yarn originating in the U.S. or one or more beneficiary countries [19 CFR 10.213(a)(4)].
E: Apparel assembled in one or more lesser developed beneficiary countries [19 CFR 10.213(a)(5)].
F: Sweaters knit to shape in chief weight of cashmere [19 CFR 10.213(a)(6)].
G: Sweaters knit to shape with 50 percent or more by weight of fine wool [19 CFR 10.213(a)(7)].
H: Apparel cut and assembled in one or more beneficiary countries from fabrics or yarn not formed in the United States or a beneficiary country (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.213(a)(8) or (a)(9)].
I: Handloomed, handmade or folklore articles [19 CFR 10.213(a)(10)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.

I agree to maintain, and present upon request, documentation necessary to support this certificate.

12. Authorized Signature		13. Company
14. Name (Print or Type)		15. Title
16a. Date(DD/MM/YY)	16b. Blanket Period From: To:	17. Telephone Number Facsimile Number

(c) *Preparation of Certificate*. The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10, which should be completed only when preference group "H" is inserted in block 5, should state the name of the fabric or yarn that is not formed in the United States or a beneficiary country or that is not available in commercial quantities in the United States;

(13) Block 16a should reflect the date on which the Certificate was completed and signed;

(14) Block 16b should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.216(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in block 16a). The "to" date is the date on which the blanket period

expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.215 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.213, the importer must make a written declaration that the article qualifies for that treatment. In the case of an article described in § 10.213(a)(1), the written declaration should be made by including on the entry summary, or equivalent documentation, the symbol "D" as a prefix to the subheading within Chapter 98 of the HTSUS under which the article is classified, and, in the case of any article described in § 10.213(a)(2) through (a)(10), the inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.216(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.214, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.216 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.215 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.215(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.215(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized

agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.214(c)(14), "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required*-(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the AGOA.

Check One:

( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name

_____
Title

_____
Address

_____
Signature and Date

(2) *Exception*. If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.214 through 10.216, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.217 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs*. A claim for preferential treatment made under § 10.215, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.216, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treat-

ment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.215, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.213(a). If the importer is claiming that the article incorporates fabric or yarn that originated or was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.214(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the beneficiary country to the United States. If the imported article was shipped through a country other than a beneficiary country and the invoices and other documents from the beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.213(c)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

PART 163 - RECORDKEEPING

1. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to Part 163 is amended by adding a new listing under section IV in numerical order to read as follows:

APPENDIX TO PART 163–INTERIM (a)(1)(A) LIST

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IV. * * *

§ 10.216 AGOA Textile Certificate of Origin and supporting records

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RAYMOND W. KELLY
Commissioner of Customs

Approved: September 29, 2000

TIMOTHY E. SKUD
Acting Deputy Assistant
Secretary of the Treasury

[Published in the **Federal Register**, October 5, 2000 (65 FR 59668)]

19 CFR PARTS 10 AND 163

(T.D. 00-68)

RIN 1515-AC76

UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT AND CARIBBEAN BASIN INITIATIVE

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document sets forth interim amendments to the Customs Regulations to implement the trade benefit provisions for Caribbean Basin countries contained in Title II of the Trade and Development Act of 2000. The trade benefits under Title II, also referred to as the United States-Caribbean Basin Trade Partnership Act (the CBTPA), apply to Caribbean Basin countries designated by the President and involve the entry of specific textile and apparel articles free of duty and free of any quantitative restrictions, limitations, or consultation levels and the extension of NAFTA duty treatment standards to non-textile articles that are excluded from duty-free treatment under the Caribbean Basin Initiative (CBI) program. The regulatory amendments contained in this document reflect and clarify the statutory standards for the trade benefits under the CBTPA and also include specific documentary, procedural and other related requirements that must be met in order to obtain those benefits. Finally, this document also includes some interim amendments to the existing Customs Regulations implementing the CBI to conform those regulations to previous amendments to the CBI statute.

DATES: Interim rule effective October 1, 2000; comments must be submitted by December 4, 2000.

ADDRESSES: Written comments may be addressed to, and inspected at, the Regulations Branch, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT:

Operational issues: Cathy Sauceda, Office of Field Operations (202-927-4198).

Legal issues regarding textiles: Cynthia Reese, Office of Regulations and Rulings (202-927-1361).

Other legal issues: Craig Walker, Office of Regulations and Rulings (202-927-1116).

SUPPLEMENTARY INFORMATION:

BACKGROUND:

United States-Caribbean Basin Trade Partnership Act On May 18, 2000, President Clinton signed into law the Trade and Development Act of 2000 (the "Act"), Public Law 106-200, 114 Stat. 251. Title II of the Act concerns trade benefits for the Caribbean Basin and is referred to in the Act as the "United States-Caribbean Basin Trade Partnership Act" (the "CBTPA").

Subtitle A of Title II of the Act concerns trade policy for Caribbean Basin countries and consists of section 201 (short title), section 202 (findings and policy), and section 203 (definitions). Subtitle B of Title II of the Act addresses trade benefits for Caribbean Basin countries and consists of section 211 (temporary provisions to provide additional trade benefits to certain beneficiary countries), section 212 (duty-free treatment for certain beverages made with Caribbean rum), and section 213 (meetings of trade ministers and USTR). This document specifically concerns the additional trade benefit provisions of section 211.

Subsection (a) of section 211 of the Act revises section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, also referred to as the Caribbean Basin Initiative, or CBI, statute codified at 19 U.S.C. 2701-2707). The CBI is a duty preference program that applies to exports from those Caribbean Basin countries that have been designated by the President as program beneficiaries. Although the origin and related rules for eligibility for duty-free treatment under the CBI are similar to those under the older Generalized System of Preferences duty-free program (the GSP, Title V of the Trade Act of 1974, codified at 19 U.S.C. 2461-2467), the CBI differs from the GSP in a number of respects, including the fact that under the CBI all articles are eligible for duty-free treatment (that is, they do not have to be specially designated as eligible by the President) except those that are specifically excluded under the statute. Prior to the amendment effected by subsection (a) of section 211 of the Act, section 213(b) of the CBI statute was headed "articles to which duty-free treatment does not apply" and consisted only of a list of specific types of products excluded from CBI duty-free treatment.

As a result of the amendment made by subsection (a) of section 211 of the Act, section 213(b) of the CBI statute now is headed "import-sensitive articles" and consists of five principal paragraphs. These five paragraphs are summarized below.

Paragraph (1) of amended section 213(b) provides that, subject to paragraphs (2) through (5), the duty-free treatment provided under the CBI does not apply to the following:

1. Textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date [subparagraph (A)];

2. Footwear not designated at the time of the effective date of the CBI (that is, August 5, 1983) as eligible articles for the purpose of the

GSP [subparagraph (B)];

3. Tuna, prepared or preserved in any manner, in airtight containers [subparagraph (C)];

4. Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the Harmonized Tariff Schedule of the United States (HTSUS) [subparagraph (D)];

5. Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply [subparagraph (E)]; or

6. Articles to which reduced rates of duty apply under section 213(h) (that is, handbags, luggage, flat goods, work gloves, and leather wearing apparel that are a product of a CBI beneficiary country and that were not designated on August 5, 1983, as eligible articles for purposes of the GSP) [subparagraph (F)].

The content of this new paragraph (1) corresponds to that of entire former section 213(b) but with some minor wording changes. Therefore, paragraphs (2) through (5) of amended section 213(b), as discussed below, are entirely new provisions.

Paragraph (2) of amended section 213(b) concerns textile and apparel products. Paragraph (2)(A) provides, during the "transition period," for the application of preferential treatment described in paragraph (2)(B) to specific textile and apparel articles. Under paragraph (2)(B), "preferential treatment" means, except where the President takes bilateral emergency action under paragraph (2)(E), that the articles in question may enter the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels. Section 213(b)(5)(D) defines "transition period" for purposes of section 213(b) as meaning, with respect to a CBTPA beneficiary country, the period that begins on October 1, 2000, and ends on the earlier of September 30, 2008, or the date on which a free trade agreement enters into force with respect to the United States and the CBTPA beneficiary country. Section 213(b)(5)(B) defines "CBTPA beneficiary country" for purposes of section 213(b) as meaning any "beneficiary country" as defined in section 212(a)(1)(A) of the CBI statute (19 U.S.C. 2702(a)(1)(A)) which the President designates as a CBTPA beneficiary country, taking into account the designation criteria specified in sections 212(b) and (c) and other appropriate designation criteria including those specified under section 213(b)(5)(B). The textile and apparel articles under paragraph (2)(A) of section 213(b) to which the preferential treatment applies are as follows:

1. Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS [paragraph (2)(A)(i)(I)];

2. Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes [paragraph (2)(A)(i)(II)];

3. Apparel articles cut in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more of those countries with thread formed in the United States [paragraph (2)(A)(ii)];

4. Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTSUS) in a CBTPA beneficiary country from yarns wholly formed in the United States, and knit apparel articles (other than non-underwear t-shirts) cut and wholly assembled in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries), but subject to the application of annual quantitative limits expressed in square meter equivalents during the 8-year transition period and with percentage increases of those limits in each of the first four years [paragraph (2)(A)(iii)(I)];

5. Non-underwear t-shirts, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States, but subject to the application of annual quantitative limits expressed in dozens and with percentage increases of those limits in each of the first four years and with application of a set quantitative limit for each year after the fourth year [paragraph (2)(A)(iii)(III)];

6. Brassieres classifiable under subheading 6212.10 of the HTSUS, if both cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both, but subject to a requirement that, in each of seven 1-year periods starting on October 1, 2001, at least 75 percent of the value of the fabric contained in the articles in the preceding year was attributed to fabric components formed in the United States (the 75 percent standard rises to 85 percent for a producer found by Customs to have not met the 75 percent standard in the preceding year) [paragraph (2)(A)(iv)];

7. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the North American Free Trade Agreement (NAFTA). (This CBTPA provision in effect applies to apparel articles which are originating goods, and thus are entitled to preferential duty treatment, under the NAFTA tariff shift and related rules based on the fact that the fabrics or yarns used to produce them were determined to be in short supply in the context of the NAFTA. The fabrics and yarns in question include fine count cotton knitted fabrics for certain apparel, linen, silk, cotton velveteen, fine wale corduroy, Harris Tweed, certain woven fabrics made with animal hairs, certain lightweight, high thread count poly-cotton woven fabrics, and certain lightweight, high thread count broadwoven fabrics used in the production of men's and boys' shirtsBsee House Report 106-606, 106th Congress, 2d Session, at page 77, which explains a substantively identical provision of the African Growth and Opportunity Act that is contained in Title I of the Act.) [paragraph (2)(A)(v)(I)];

8. Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries and that is not described in paragraph (2)(A)(v)(I), to the extent that the President has determined that the fabric or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the treatment provided under paragraph (2)(A)(v)(I) [paragraph (2)(A)(v)(II)];

9. A handloomed, handmade, or folklore textile or apparel article of a CBTPA beneficiary country that the President and representatives of the CBTPA beneficiary country concerned mutually agree upon as being a handloomed, handmade, or folklore good of a kind described in section 2.3(a), (b), or (c) or Appendix 3.1.B.11 of Annex 300-B of the NAFTA and that is certified as such by the competent authority of the beneficiary country [paragraphs (2)(A)(vi) and (2)(C)];

10. Textile luggage assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS [paragraph (2)(A)(viii)(I)]; and

11. Textile luggage assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States [paragraph (2)(A)(viii)(II)].

In addition, paragraph (2)(A)(vii) sets forth special rules that apply for purposes of determining the eligibility of articles for preferential treatment under paragraph (2). These special rules are as follows:

1. Paragraph (2)(A)(vii)(I) sets forth a rule regarding the treatment of findings and trimmings. It provides that an article otherwise eli-

gible for preferential treatment under paragraph (2) will not be ineligible for that treatment because the article contains findings or trimmings of foreign origin, if those findings and trimmings do not exceed 25 percent of the cost of the components of the assembled product. This provision specifies the following as examples of findings and trimmings: sewing thread, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), and labels. However, this provision also provides that sewing thread will not be treated as findings or trimmings in the case of an article described in paragraph (2)(A)(ii) (because that paragraph specifies that the thread used in the assembly of the article must be formed in the United States and thus cannot be of "foreign" origin).

2. Paragraph (2)(A)(vii)(II) sets forth a rule regarding the treatment of specific interlinings, that is, a chest type plate, "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments. Under this rule, an article otherwise eligible for preferential treatment under paragraph (2) will not be ineligible for that treatment because the article contains interlinings of foreign origin, if the value of those interlinings (and any findings and trimmings) does not exceed 25 percent of the cost of the components of the assembled article. This provision also provides for the termination of this treatment of interlinings if the President makes a determination that United States manufacturers are producing those interlinings in the United States in commercial quantities.

3. Paragraph (2)(A)(vii)(III) sets forth a *de minimis* rule which provides that an article that would otherwise be ineligible for preferential treatment under paragraph (2) because the article contains fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries will not be ineligible for that treatment if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the good. However, this provision also states that, notwithstanding the foregoing rule, an apparel article containing elastomeric yarns will be eligible for preferential treatment under paragraph (2) only if those yarns are wholly formed in the United States.

4. Finally, paragraph (2)(A)(vii)(IV) sets forth a special origin rule that provides that an article otherwise eligible for preferential treatment under paragraph (2)(A)(i) or paragraph (2)(A)(ii) will not be ineligible for that treatment because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS duty-free from a country that is a party to an agreement with the United States establishing a free trade area, which entered into force before January 1, 1995.

Paragraph (3) of amended section 213(b) is entitled "transition pe-

riod treatment of certain other articles originating in beneficiary countries." Paragraph (3)(A) provides that, except in the case of any article accorded duty-free treatment under U.S. Note 2(b) to Subchapter II of Chapter 98 of the HTSUS (that is, certain articles assembled or processed in a CBI beneficiary country in whole of components or ingredients that are a product of the United States), the tariff treatment accorded at any time during the transition period to any article referred to in any of subparagraphs (B) through (F) of paragraph (1) that is a "CBTPA originating good" will be identical to the tariff treatment that is accorded at that time under Annex 302.2 of the NAFTA to an article described in the same 8-digit subheading of the HTSUS that is a good of Mexico and is imported into the United States. Section 213(b)(5)(C)(i) defines "CBTPA originating good" for purposes of section 213(b) as meaning a good that meets the rules of origin for a good set forth in Chapter 4 of the NAFTA as implemented pursuant to United States law. Section 213(b)(5)(C)(ii) sets forth the following rules for applying Chapter 4 of the NAFTA with respect to a CBTPA beneficiary country for purposes of section 213(b): (1) only the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA; (2) any reference to trade between the United States and Mexico will be deemed to refer to trade between the United States and a CBTPA beneficiary country; (3) any reference to a party will be deemed to refer to a CBTPA beneficiary country or the United States; and (4) any reference to parties will be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination of those countries). In the case of handbags, luggage, flat goods, work gloves, and leather wearing apparel to which reduced rates of duty apply under section 213(h), paragraph (3)(B) of section 213(b) provides that, in implementing the provisions of paragraph (3)(A), the rate of duty under section 213(h) will apply if it is lower than the rate of duty resulting under paragraph (3)(A).

The effect of paragraph (3) of section 213(b) is to provide for the application of NAFTA tariff treatment to goods excluded from the CBI, except for textile and apparel articles (some of which are separately addressed under paragraph (2) of section 213(b) as discussed above). Thus, imports of footwear, canned tuna, petroleum and petroleum products, watches and watch parts, handbags, luggage, flat goods, work gloves, and leather wearing apparel would be eligible for a reduction in duty equal to the preference Mexican products enjoy in accordance with the staged duty-rate reductions set forth in Annex 302.2 of the NAFTA, provided that the merchandise in question meets the origin rules for a "NAFTA originating good" (in other words, it must meet the NAFTA rules of origin set forth in General Note 12 of the HTSUS and in the Appendix to Part 181 of the Customs Regulations (19 CFR Part 181)).

Paragraph (4) of amended section 213(b) is entitled "Customs procedures" and sets forth regulatory standards for purposes of preferential

treatment under paragraph (2) or (3). It includes provisions relating to import procedures, prescribes a specific factual determination that the President must make regarding the implementation of certain procedures and requirements by each CBTPA beneficiary country, and sets forth responsibilities of Customs and the United States Trade Representative regarding the study of, and reporting to Congress on, cooperative and other actions taken by each CBTPA beneficiary country to prevent transshipment and circumvention in the case of textile and apparel goods. The specific provisions under paragraph (4) that require regulatory treatment in this document are the following:

1. Paragraph (4)(A)(i) provides that any importer that claims preferential treatment under paragraph (2) or (3) must comply with customs procedures similar in all material respects to the requirements of Article 502(1) of the NAFTA as implemented pursuant to United States law, in accordance with regulations promulgated by the Secretary of the Treasury. The NAFTA provision referred to in paragraph (4)(A)(i) concerns the use of a Certificate of Origin and specifically requires that the importer (1) make a written declaration, based on a valid Certificate of Origin, that the imported good qualifies as an originating good, (2) have the Certificate in its possession at the time the declaration is made, (3) provide the Certificate to Customs on request, and (4) promptly make a corrected declaration and pay any duties owing where the importer has reason to believe that a Certificate on which a declaration was based contains information that is not correct.

2. Paragraph (4)(B) provides that the Certificate of Origin that otherwise would be required pursuant to the provisions of paragraph (4)(A)(i) will not be required in the case of an article imported under paragraph (2) or (3) if that Certificate of Origin would not be required under Article 503 of the NAFTA (as implemented pursuant to United States law), if the article were imported from Mexico. Article 503 of the NAFTA sets forth, with one general exception, three specific circumstances in which a NAFTA country may not require a Certificate of Origin.

Other Changes to the CBI Program

Section 235 of the Trade and Tariff Act of 1984 (Public Law 98-573, 98 Stat. 2948) amended section 213(a) of the CBI statute (19 U.S.C. 2703(a)) by adding at the end a new paragraph (a)(3) (now paragraph (a)(4)). This provision provides that (1) notwithstanding 19 U.S.C. 1311, the products of a beneficiary country which are imported directly from any beneficiary country into Puerto Rico may be entered under bond for processing or use in manufacturing in Puerto Rico, and (2) no duty will be imposed on the withdrawal from warehouse of the product of that processing or manufacturing if, at the time of that withdrawal, the product meets the requirements of section 213(a)(1)(B) (that is, the CBI 35 percent value-content requirement). In connection with the publication of the final CBI implementing regulations (see T.D. 84-

237, published in the **Federal Register** at 49 FR 47986 on December 7, 1984), Customs noted that this amendment of the CBI statute was intended to allow processing or manufacturing in a Customs bonded manufacturing warehouse in Puerto Rico at the tail end of the manufacturing process so as to enable a product from a CBI beneficiary country to meet the 35 percent value-content requirement. Customs further noted in T.D. 84-237 that the amendment resulted in a significant change in the CBI rules of origin since an article could be substantially transformed in the Puerto Rican warehouse so as to lose its status as a product of a beneficiary country but would still be entitled to duty-free treatment upon withdrawal from the warehouse provided that (1) the article entered in the warehouse was a product of, and was imported directly from, a beneficiary country, and (2) the article withdrawn from the warehouse meets the 35 percent value-content requirement. Although no change was made to the CBI regulatory texts at that time in response to this statutory amendment, Customs now believes that it would be preferable for purposes of transparency to reflect this aspect of the CBI statute within the existing CBI regulatory structure. This document therefore includes a conforming amendment to the CBI regulations to accomplish this.

Section 212 of the Customs and Trade Act of 1990 (Public Law 101-382, 104 Stat. 629) amended section 213 of the CBI statute (1) by adding a new subsection (h) which requires the President to proclaim specified reductions in the rates of duty on handbags, luggage, flat goods, work gloves, and leather wearing apparel that are the product of a beneficiary country and that were not designated on August 5, 1983, as eligible articles for purposes of the GSP, and (2) by making consequential conforming changes to subsection (b) which, as indicated above, at that time consisted only of a list of products excluded from duty-free treatment under the CBI. Although some of these changes made by section 212 of the 1990 Act have been superseded by the changes made by subsection (a) of section 211 of the Act as discussed above, the basic reduced duty principle reflected in section 213(h) of the CBI statute remains intact and warrants regulatory treatment. Accordingly, regulatory amendments are included in this document for this purpose.

Finally, section 215 of the Customs and Trade Act of 1990 amended section 213(a) of the CBI statute by adding a new paragraph (5) which provides that the duty-free treatment provided for under the CBI will apply to an article (other than an article listed in section 213(b)) which is the growth, product, or manufacture of the Commonwealth of Puerto Rico if (1) the article is imported directly from the beneficiary country into the customs territory of the United States, (2) the article was by any means advanced in value or improved in condition in a beneficiary country, and (3) if any materials are added to the article in a beneficiary country, those materials are a product of a beneficiary country or the United States. This amendment was intended to ensure that a product made in Puerto Rico which is sent to a CBI beneficiary coun-

try for a minimal amount of processing would be eligible for duty-free treatment under the CBI when imported into the United States even though the article has not been substantially transformed in the CBI beneficiary country (see House Report 101 650, 101st Congress, 2d Session, at 131). This document includes an amendment to the Customs Regulations to prescribe standards for the application of this provision.

In addition, this document includes a number of editorial changes to the CBI regulatory texts to conform those texts to the statutory changes discussed above.

SECTION-BY-SECTION DISCUSSION OF INTERIM AMENDMENTS

Section 10.191

The amendments to this section involve the definitions in paragraph (b) and include changing various cross-references to "§ 10.198" to reflect the addition of new
§§ 10.198a and 10.198b as discussed below. In addition, paragraphs (b)(2)(i) and (b)(2)(ii) are revised, and a new paragraph (b)(2)(vi) is added, to reflect subparagraphs (1)(A), (B), and (F) of section 213(b) of the CBI statute as amended by subsection (a) of section 211 of the Act.

Sections 10.192 and 10.193

The amendments to these sections involve cross-reference changes similar to those made in § 10.191.

Section 10.195

The amendment to this section involves a revision of paragraph (b) (which concerns the addition of value in the U.S. Virgin Islands and in the Commonwealth of Puerto Rico) to accommodate the amendment to the CBI statute made by section 235 of the Trade and Tariff Act of 1984. The amendment consists of the designation of the existing regulatory text as paragraph (b)(1) and the addition of a new paragraph (b)(2) to cover manufacturing in a bonded warehouse in Puerto Rico after final exportation of an article from a beneficiary country. The paragraph (b)(2) text clarifies the statutory reference to "products of" a beneficiary country as meaning products that meet the "grown, produced, or manufactured" standard set forth in § 10.195(a), because the term "product of" has been consistently interpreted by Customs to refer to products that meet that standard and, since Congress is presumed to have known about that interpretation when it drafted the statute, Customs believes that this result would be consistent with Congressional intent. For the same reason, the paragraph (b)(2) text clarifies the meaning of "imported directly" with reference to the provisions of § 10.193.

New § 10.198a

This section covers the basic duty reduction principle of section 213(h) of the CBI statute as added by section 212 of the Customs and Trade Act of 1990. The exception clause at the beginning of this new section has been included because of the potential effect that paragraph (3) of amended section 213(b) would have on the application of reduced duty rates under section 213(h) – see new § 10.233 discussed and set forth below. Although the relevant legislative history is silent on the question of what origin and preference rules should apply beyond the "product of" language of section 213(h), Customs does not believe that Congress intended that less stringent rules should apply for these import-sensitive products than would apply to other products that are eligible for full CBI duty-free treatment. Accordingly, this new § 10.198a incorporates by reference the "imported directly" and "grown, produced, or manufactured" and 35 percent value-content requirements of §§ 10.193 and 10.195.

New § 10.198b

This section covers the amendment of section 213(a) of the CBI statute made by section 215 of the Customs and Trade Act of 1990. Contrary to the approach taken in new § 10.198a and except as regards the "imported directly" requirement, the § 10.198b text does not incorporate by reference the normal CBI origin and preference regulatory standards because their application here would in some cases be inconsistent with the clear wording of the statutory provision in question.

New §§ 10.221 through 10.227

These new sections are intended to implement those textile and apparel preferential treatment provisions within paragraphs (2), (4) and (5) of amended section 213(b) of the CBI statute that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations.

Section 10.221 outlines the statutory context for the new sections and is self-explanatory.

Section 10.222 sets forth definitions for various terms used in the new regulatory provisions. The following points are noted regarding these definitions:

1. The definition of "apparel articles," by referring to goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS, is intended to reflect the scope of apparel under the Agreement on Textiles and Clothing annexed to the WTO Agreement and referred to in 19 U.S.C. 3511(d)(4).

2. The definition of Aassembled in one or more CBTPA beneficiary countries" is based in part on the definition of "wholly assembled" in § 102.21(b)(6) of the Customs Regulations (19 CFR 102.21(b)(6)) but also

adds a reference to thread as a material that is not considered to be a component for purposes of the definition. In addition, the definition is intended to allow a prior partial assembly in the United States, consistent with the overall structure of the CBTPA as reflected in the types of operations allowed under the program.

3. The definition of "CBTPA beneficiary country" is an adaptation of, and for purposes of this context is consistent with, the definition contained in section 213(b)(5)(B).

4. The definition of "cut in one or more CBTPA beneficiary countries" precludes any cutting operation performed in a country other than a CBTPA beneficiary country in accordance with the clear language of the statute.

5. The definition of "knit-to-shape" follows the definition in § 102.21(b)(3) of the Customs Regulations (19 CFR 102.21(b)(3)).

6. The definition of "made in one or more CBTPA beneficiary countries" refers specifically to non-underwear t-shirts because the defined expression appears only in paragraph (2)(A)(iii)(III) of amended section 213(b) which applies only to non-underwear t-shirts. Neither the statute nor the legislative history provides any explanation for the use of the words "made in" in this context. Since the statutory text requires that the articles be made in the CBTPA region from regionally-formed fabric, and in view of the fact that the production of t-shirts from fabric invariably involves both cutting of the fabric and assembly of the cut components, Customs interprets Amade in" to refer to cutting and complete assembly.

7. The definition of "major parts" is taken from the definition in § 102.21(b)(4) of the Customs Regulations (19 CFR 102.21(b)(4)).

8. The definition of "NAFTA" is the same as that used in section 112(e)(3) under Title I of the Act and is appropriate for the present context because a distinction is made under the statute between the original Agreement signed by the United States, Canada, and Mexico (which this definition reflects) and the implementation of that Agreement under U.S. law.

9. The definition of "preferential treatment" reflects the terms of paragraph (2)(B) of amended section 213(b).

10. The definition of "wholly assembled in one or more CBTPA beneficiary countries" is intended to ensure, consistent with the wording of the statute and the clear meaning of "wholly" in this context, that all assembly operations (including any initial partial assembly or any tail-end assembly operation) will be performed in the countries that are the intended beneficiaries of the CBTPA program.

11. The definition of "wholly formed" relies in part on the definition of "fabric-making process" in § 102.21(b)(2) of the Customs Regulations (19 CFR 102.21(b)(2)) and also uses a similar approach for yarns and thread because the statute uses these terms with reference to fabrics, yarns, and thread. The definition is intended to ensure that all processes essential for yarn or thread or fabric formation are performed in the United States or CBTPA beneficiary countries.

Section 10.223 identifies the articles to which preferential treatment applies under paragraph (2) of amended section 213(b). Paragraph (a) identifies the various groups of textile and apparel articles described under paragraph (2)(A) of the statute and includes in the introductory text an "imported directly" requirement, consistent with the terms of the implementing Presidential Proclamation. Paragraph (b) covers the special rules contained in paragraph (2)(A)(vii) of the statute regarding: findings and trimmings; interlinings; the *de minimis* rule; and the rule for nylon filament yarn. Paragraph (c) explains what is meant by "imported directly." The following specific points are noted regarding these regulatory texts:

1. With regard to paragraph (a)(2), which corresponds to paragraph (2)(A)(i)(II) of the statute, Customs notes that the statutory provision does not address the issue of whether the embroidery or stone-washing and other processes mentioned in that provision (which are principally finishing operations normally done after assembly) must be done in beneficiary countries. The relevant legislative history does not address the issue. The statute could be read to allow these processes to be done in a country that is not a CBTPA beneficiary country provided that, after these processes are completed, the article is returned to a CBTPA beneficiary country for direct importation into the United States. However, Customs believes that this interpretation would not be compatible with the Congressional finding in section 202 of the Act that offering temporary benefits to Caribbean Basin countries will, among other things, promote the growth of free enterprise and economic opportunity in those neighboring countries, because it could have the effect of diverting those finishing operations to third countries and thus away from the intended beneficiaries under the Act. Customs has determined that limiting the performance of those processes to CBTPA beneficiary countries would be in accord with the findings of Congress and would be more consistent with the intent of the CBTPA program. Accordingly, in paragraph (a)(2) of the regulatory text, the words "in a CBTPA beneficiary country" have been added at the end after "processes."

2. In paragraphs (a)(4) and (a)(5) which correspond to paragraphs (2)(A)(iii)(I) and (2)(A)(iii)(III) of the statute, respectively, the parenthetical cross-reference and the t-shirt reference have been replaced by a reference to "non-underwear t-shirts" in order to simplify the text and clarify the relationship between the two provisions in this regard.

3. In paragraph (a)(6) which corresponds to paragraph (2)(A)(iv) of the statute, specific reference is made to "brassieres" in order to explain the coverage of the HTSUS provision referred to in the statute.

4. In paragraph (a)(8), which corresponds to paragraph (2)(A)(v)(II) of the statute, no reference has been made at the end to treatment provided "for fabrics and yarn" because treatment in this context must be read in the context of paragraph (2)(A)(v)(I) of the statute and therefore can only have reference to articles made from fabrics and yarn.

5. Paragraph (a)(12) reflects the terms of new HTSUS subheading

9820.11.18 which is set forth in the Annex to the implementing Proclamation referred to above.

6. Paragraph (b)(1) is divided into two parts: Paragraph (b)(1)(i) reflects the basic findings, trimmings, interlinings, and *de minimis* rules of paragraphs (2)(A)(vii)(I)-(III) of the statute, and paragraph (b)(1)(ii) is intended to clarify the relationship between findings and trimmings on the one hand and fibers and yarns on the other hand for purposes of applying the 25 percent by value and 7 percent by weight limitations under the statute. As regards paragraph (b)(1)(ii), Customs believes that some clarification is appropriate in this context because sometimes a fiber or yarn may be used in an article as a finding or trimming. The statute is ambiguous as to whether an article is ineligible if the total weight of all foreign fibers or yarns exceeds the 7 percent limit but the value of all foreign findings and trimmings does not exceed the 25 percent limit. Thus, the question arises as to which limitation should apply. In the absence of any guidance on this point in the relevant legislative history, Customs has concluded that the best approach is to give precedence to the findings and trimmings limitation. Thus, under paragraph (b)(1)(ii) a foreign yarn, for example, that is used in an article as a trimming would be subject to the 25 percent by value limitation rather than the 7 percent by weight limitation. In addition, the following points are noted regarding the paragraph (b)(1) texts:

a. In the first sentence of paragraph (b)(1)(i)(A), the words "the value of" have been added after the word "if" to clarify that it is the value of the findings and trimmings that must not exceed the 25 percent level. In addition, in the second sentence of paragraph (b)(1)(i)(A), the comma appearing in the statutory text between "decorative lace" and "trim" has been removed to clarify what Customs believes to be the intent (see section 112(d)(1)(A) of the Act which is essentially identical to paragraph (2)(A)(vii)(I) of the statute but employs the expression "decorative lace trim"). Also in the second sentence of paragraph (b)(1)(i)(A), the words "zippers, including zipper tapes and labels" in paragraph (2)(A)(vii)(I) of the statute have been replaced with the words "zippers (including zipper tapes), labels" because there is no such thing as a "zipper label" and to ensure proper treatment of labels as findings and trimmings in their own right. Customs believes that the wording of these regulatory texts in these regards is consistent with the intent of Congress as reflected in the explanation of the provision in the relevant legislative history (see House Report 106-606, 106th Congress, 2d Session, at page 79);

b. A separate paragraph (b)(1)(i)(C) has been included to allow a combination of findings and trimmings and interlinings up to a total of 25 percent of the cost of the components of the assembled article, because Customs believes that was the result intended by Congress by the inclusion of the words "(and any findings and trimmings)" in paragraph (2)(A)(vii)(II)(aa) of the statute; and

c. The second sentence of paragraph (2)(A)(vii)(III) of the statute

regarding elastomeric yarns has been included in the regulatory text as an exception at the end of paragraph (b)(1)(i)(D), which sets forth the *de minimis* rule, because Customs believes that both the placement and the wording of the elastomeric yarn provision in the statute support the conclusion that it is intended to operate only as an exception to the *de minimis* rule. The regulatory text refers specifically to any apparel article described in "paragraph (a)(1) through (a)(5)" because those are the only apparel article provisions under § 10.223 that specify "yarns wholly formed in the United States."

7. In paragraph (b)(2), which sets forth the special rule for nylon filament yarn of paragraph (2)(A)(vii)(IV) of the statute, specific reference is made to Canada, Mexico, and Israel because those are the only countries with which the United States had a free trade agreement that entered into force before January 1, 1995.

8. The explanation of "imported directly" in paragraph (c) follows the text used in § 10.193 of the CBI implementing regulations (19 CFR 10.193) but incorporates editorial changes to reflect a CBTPA context.

Section 10.224 prescribes the use of a Certificate of Origin and thus reflects the regulatory mandate contained in paragraph (4)(A)(i) of the statute. Paragraph (a) of the regulatory text contains a general statement regarding the purpose and preparation of the Certificate of Origin and is based in part on § 181.11 of the implementing NAFTA regulations (19 CFR 181.11). Paragraph (b) sets forth the form for the Certificate of Origin, which is directed toward the specific groups of articles described under paragraph (2)(A) of the statute and thus bears no substantive relationship to the Certificate of Origin used under the NAFTA (which involves different country of origin standards for preferential duty treatment). Paragraph (c) sets forth instructions for preparation of this Certificate of Origin. It should be noted that the Certificate of Origin prescribed under this section has no effect on the textile declaration prescribed under § 12.130 of the Customs Regulations (19 CFR 12.130) which still must be submitted to Customs in accordance with that section even in the case of textile products that are entitled to preferential treatment under the CBTPA program.

Section 10.225 sets forth the procedures for filing a claim for preferential treatment. Consistent with the mandate in paragraph (4)(A)(i) of the statute for procedures "similar in all material respects to the requirements of Article 502(1) of the NAFTA," this regulatory text is based on the NAFTA regulatory text contained in 19 CFR 181.21, but includes appropriate changes to conform to the current context. However, contrary to the NAFTA regulatory text, paragraph (a) of § 10.225 does not allow for a declaration based on a copy of an original Certificate of Origin.

Section 10.226 concerns the maintenance of records and submission of the Certificate of Origin by the importer and follows the NAFTA regulatory text contained in 19 CFR 181.22 but, again, with appropriate changes to conform to the current context. The following points are noted regarding the regulatory text:

1. In paragraph (a) which concerns the maintenance of records, specific reference is made to "the provisions of part 163" which sets forth the basic Customs recordkeeping requirements that apply to importers and other persons involved in customs transactions. The effect is the same as that under the NAFTA § 181.22 text.

2. Paragraph (b) concerns submission of the Certificate of Origin to Customs and thus also relates directly to a requirement contained in Article 502(1) of the NAFTA. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(b) but differs from the NAFTA text by not specifying a 4-year period for acceptance of the Certificate by Customs, because that 4-year period is only relevant in a NAFTA context.

3. Paragraph (c) concerns the correction of defective Certificates of Origin and the nonacceptance of blanket Certificates in certain circumstances. The text is based on the NAFTA regulatory text contained in 19 CFR 181.22(c) but is simplified and does not include any reference to NAFTA-type origin verifications which do not apply for CBTPA purposes.

4. Paragraph (d) sets forth the circumstances in which a Certificate of Origin is not required. Consistent with the terms of paragraph (4)(B) of the statute, this regulatory text follows the terms of Article 503 of the NAFTA and the NAFTA regulatory text contained in 19 CFR 181.22(d).

Finally, section 10.227 concerns the verification and justification of claims for preferential treatment. Paragraph (a) concerns the verification of claims by Customs and paragraph (b) prescribes steps that a U.S. importer should take in order to support a claim for preferential treatment. Although paragraph (a) is derived from provisions contained in the GSP regulations (19 CFR 10.173(c)) and in the CBI regulations (19 CFR 10.198(c)), the text expands on the GSP/CBI approach in the following respects:

1. In paragraph (a)(1), specific reference is made to the review of import-related documents required to be made, kept, and made available by importers and other persons under Part 163 of the regulations.

2. Paragraph (a)(2) sets forth examples of documents and information relating to production in a CBTPA beneficiary country that Customs may need to review for purposes of verifying a claim for preferential treatment.

3. Finally, paragraph (a)(3) refers to evidence in a CBTPA beneficiary country to document the use of U.S. materials in an article produced in the CBTPA beneficiary country, because the presence of U.S. materials is a key element for many of the articles to which preferential treatment applies under the CBTPA. Accordingly, U.S. importers must be aware of the fact that their ability to successfully claim preferential treatment on their imports may be a function of the nature of the records maintained by the CBTPA beneficiary country producer not only with regard to the production process but also with regard to

the source of the materials used in that production.

New §§ 10.231 through 10.237

These new sections are intended to implement those non-textile preferential tariff treatment provisions within paragraphs (3), (4) and (5) of amended section 213(b) of the CBI statute that relate to U.S. import procedures and thus are appropriate for treatment in the Customs Regulations. In view of the similarities between paragraphs (2) and (3) under the statute, in particular as regards the use of a Certificate of Origin and related Customs procedures, the structure and content of new §§ 10.231 through 10.237 are based on the structure and content used in this document for the textile provisions of new §§ 10.221 through 10.227, but with appropriate changes or variations to reflect the paragraph (3) statutory context. The following particular points are noted regarding the texts of new §§ 10.231 through 10.237:

1. The term "preferential tariff treatment" is used throughout (rather than "preferential treatment") in order to reflect the use of the word "tariff" as a modifier of "treatment" in paragraph (3) of the statute. The definition of this term in § 10.232 is based primarily on paragraph (3)(A)(i) of the statute.

2. The definition of "CBTPA originating good" in § 10.232 reflects the terms of paragraph (5)(C)(i) of the statute but refers specifically to provisions within the HTSUS and the NAFTA regulations to clarify the meaning of the reference in the statute to Chapter 4 of the NAFTA "as implemented pursuant to United States law."

3. In § 10.233(a) which identifies the articles eligible for preferential tariff treatment under paragraph (3) of the statute, an "imported directly" requirement has been included for the same reason stated above in regard to new § 10.223. The remainder of § 10.233(a) reflects the terms of paragraphs (3)(A)(i) and (ii) of the statute.

4. Section 10.233(b) sets forth standards for applying the NAFTA rules of origin for purposes of determining whether an article qualifies as a CBTPA originating good. The regulatory text follows paragraph (5)(C)(ii) of the statute.

5. Section 10.233(c) concerns leather-related goods to which duty reductions apply under section 213(h) of the CBERA and specifically reflects the terms of paragraph (3)(B) of the statute regarding application of the lower rate of duty.

6. Section 10.234 sets forth the basic NAFTA Certificate of Origin requirement. In view of the applicability of the NAFTA rules of origin in this context, Customs has determined that the appropriate procedure would be to use a modified version of the separate Customs Form used for the NAFTA. Accordingly, the § 10.234 text is considerably shorter than the text of new § 10.224 because it does not contain the text of the Certificate and the instructions for its completion.

Appendix to Part 163

Finally, this document amends Part 163 of the Customs Regulations (19 CFR Part 163) by adding to the list of entry records in the Appendix (the interim A(a)(1)(A) list") references to the CBTPA Textile Certificate of Origin and supporting documentation prescribed under new § 10.226 and to the CBTPA Non-textile Certificate of Origin and supporting documentation prescribed under new § 10.236.

COMMENTS

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs, including comments on the clarity of this interim rule and how it may be made easier to understand. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, DC.

INAPPLICABILITY OF NOTICE AND DELAYED EFFECTIVE DATEREQUIREMENTS AND THE REGULATORY FLEXIBILITY ACT

Pursuant to the provisions of 5 U.S.C. 553(b)(B), Customs has determined that prior public notice and comment procedures on these regulations are unnecessary and contrary to the public interest. The regulatory changes provide trade benefits to the importing public, in some cases implement direct statutory mandates, and are necessary to carry out the preferential treatment proclaimed by the President under the United States-Caribbean Basin Trade Partnership Act. For the same reasons, pursuant to the provisions of 5 U.S.C. 553(d)(1) and (3), Customs finds that there is good cause for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

EXECUTIVE ORDER 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

PAPERWORK REDUCTION ACT

This regulation is being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collection of information contained in this regulation has been reviewed and, pending receipt and evaluation of public

comments, approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1515-0226.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The collection of information in these interim regulations is in §§ 10.224, 10.225, 10.226, 10.234, 10.235, and 10.236. This information conforms to requirements in 19 U.S.C. 2703 and is used by Customs to determine whether textile and apparel articles and other products imported from designated beneficiary countries are entitled to duty-free entry under the United States-Caribbean Basin Trade Partnership Act. The likely respondents are business organizations including importers, exporters, and manufacturers.

Estimated annual reporting and/or recordkeeping burden: 18,720 hours.

Estimated average annual burden per respondent/recordkeeper: 440 hours.

Estimated number of respondents and/or recordkeepers: 42.

Estimated annual frequency of responses: on occasion.

Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer of the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, D.C. 20503. A copy should also be sent to the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, NW., 3rd Floor, Washington, D.C. 20229. Comments should be submitted within the time frame that comments are due regarding the substance of the interim regulations.

Comments are invited on: (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of the information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or startup costs and costs of operations, maintenance, and purchase of services to provide information.

DRAFTING INFORMATION

The principal author of this document was Francis W. Foote, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices participated in its development.

LIST OF SUBJECTS

19 CFR Part 10

Assembly, Bonds, Caribbean Basin Initiative, Customs duties and

inspection, Exports, Imports, Preference programs, Reporting and recordkeeping requirements, Trade agreements.

19 CFR Part 163

Administrative practice and procedure, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

AMENDMENTS TO THE REGULATIONS

For the reasons set forth in the preamble, Parts 10 and 163, Customs Regulations (19 CFR Parts 10 and 163), are amended as set forth below.

PART 10 - ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read, the specific authority citation for §§ 10.191 through 10.198 is revised to read, and a new specific authority citation for §§ 10.221 through 10.227 and §§ 10.231 through 10.237 is added to read, as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 22, Harmonized Tariff Schedule of the United States (HTSUS)), 1321, 1481, 1484, 1498, 1508, 1623, 1624, 3314;

* * * * *

Sections 10.191 through 10.198b also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

Sections 10.221 through 10.227 and §§ 10.231 through 10.237 also issued under 19 U.S.C. 2701 *et seq.*;

* * * * *

2. The authority citation under the center heading "CARIBBEAN BASIN INITIATIVE" is removed.

3. In § 10.191:

a. Paragraph (b)(1) is amended by removing the reference "§ 10.198" and adding, in its place, the reference "§ 10.198b";

b. In the introductory text of paragraph (b)(2), the first sentence is amended by adding at the end before the period the words "or in § 10.198b";

c. Paragraphs (b)(2)(i) and (b)(2)(ii) are revised;

d. Paragraph (b)(2)(iv) is amended by removing the reference "Chapter 27" and adding in its place the reference "headings 2709 and 2710";

e. Paragraphs (b)(2)(vi) through (b)(2)(viii) are redesignated as paragraphs (b)(2)(vii) through (b)(2)(ix)

f. A new paragraph (b)(2)(vi) is added;

g. Paragraph (b)(3) is amended by removing the reference "§ 10.198" and adding, in its place, the reference "§ 10.198a"; and

h. Paragraph (b)(4) is amended by removing the reference "§ 10.198" and adding, in its place, the reference "§ 10.198b".

The revisions and addition read as follows:

§ 10.191 General.

* * * * *

(b) * * *

(2) * * *

(i) Textile and apparel articles which were not eligible articles for purposes of the CBI on January 1, 1994, as the CBI was in effect on that date.

(ii) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467).

* * * * *

(vi) Articles to which reduced rates of duty apply under § 10.198a.

* * * * *

4. In § 10.192, the first sentence is amended by removing the reference "§ 10.198" and adding, in its place, the reference "§ 10.198b".

5. In § 10.193, the introductory text is amended by removing the reference "§ 10.198" and adding, in its place, the reference "§ 10.198b".

6. In § 10.195, paragraph (b) is revised to read as follows:

§ 10.195 Country of origin criteria.

* * * * *

(b) *Commonwealth of Puerto Rico and U.S. Virgin Islands*–(1) *General*. For purposes of determining the percentage referred to in paragraph (a) of this section, the term "beneficiary country" includes the Commonwealth of Puerto Rico and the U.S. Virgin Islands. Any cost or value of materials or direct costs of processing operations attributable to the U.S. Virgin Islands must be included in the article prior to its final exportation from a beneficiary country to the United States.

(2) *Manufacture in the Commonwealth of Puerto Rico after final exportation*. Notwithstanding the provisions of 19 U.S.C. 1311, if an article from a beneficiary country is entered under bond for processing or use in manufacturing in the Commonwealth of Puerto Rico, no duty will be imposed on the withdrawal from warehouse for consumption of the product of that processing or manufacturing provided that:

(i) The article entered in the warehouse in the Commonwealth of Puerto Rico was grown, produced, or manufactured in a beneficiary country within the meaning of paragraph (a) of this section and was imported directly from a beneficiary country within the meaning of § 10.193; and

(ii) At the time of its withdrawal from the warehouse, the product of the processing or manufacturing in the Commonwealth of Puerto Rico meets the 35 percent value-content requirement prescribed in paragraph (a) of this section.

* * * * *

7. New §§ 10.198a and 10.198b are added under the center heading "CARIBBEAN BASIN INITIATIVE" to read as follows:

§ 10.198a Duty reduction for certain leather-related articles.

Except as otherwise provided in § 10.233, reduced rates of duty as proclaimed by the President will apply to handbags, luggage, flat goods, work gloves, and leather wearing apparel that were not designated on August 5, 1983, as eligible articles for purposes of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467), provided that the article in question at the time it is entered:

(a) Was grown, produced, or manufactured in a beneficiary country within the meaning of § 10.195;

(b) Meets the 35 percent value-content requirement prescribed in § 10.195; and

(c) Was imported directly from a beneficiary country within the meaning of § 10.193.

§ 10.198b Products of Puerto Rico processed in a beneficiary country.

Except in the case of any article described in § 10.191(b)(2)(i) through (vi), the duty-free treatment provided for under the CBI will apply to an article that is the growth, product, or manufacture of the Commonwealth of Puerto Rico and that is by any means advanced in value or improved in condition in a beneficiary country, provided that:

(a) If any materials are added to the article in the beneficiary country, those materials consist only of materials that are a product of a beneficiary country or the United States; and

(b) The article is imported directly from the beneficiary country into the customs territory of the United States within the meaning of § 10.193.

8. Part 10 is amended by adding a new center heading followed by new §§ 10.221 through 10.227 to read as follows:

TEXTILE AND APPAREL ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

Sec.

TEXTILE AND APPAREL ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

§ 10.221 Applicability.

Title II of Public Law 106-200 (114 Stat. 251), entitled the United States-Caribbean Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701-2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(2) of the CBERA (19 U.S.C. 2703(b)(2)) provides for the preferential treatment of certain textile and apparel articles from CBERA beneficiary countries. The provisions of §§ 10.221-10.227 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential treatment pursuant to CBERA section 213(b)(2).

§ 10.222 Definitions.

When used in §§ 10.221 through 10.227, the following terms have the meanings indicated:

Apparel articles. "Apparel articles" means goods classifiable in Chapters 61 and 62 and headings 6501, 6502, 6503, and 6504 and subheadings 6406.99 and 6505.90 of the HTSUS.

Assembled in one or more CBTPA beneficiary countries. "Assembled in one or more CBTPA beneficiary countries" when used in the context of a textile or apparel article has reference to a joining together of two or more components (other than thread, decorative embellishments, buttons, zippers, or similar components) that occurred in one or more beneficiary countries, whether or not a prior joining operation was performed on the article or any of its components in the United States.

CBERA. "CBERA" means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701-2707.

CBTPA beneficiary country. "CBTPA beneficiary country" means a beneficiary country" as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential treatment of textile and apparel articles under 19 U.S.C. 2703(b)(2).

Cut in one or more CBTPA beneficiary countries. "Cut in one or more CBTPA beneficiary countries" when used with reference to apparel articles means that all fabric components used in the assembly of the article were cut from fabric in one or more CBTPA beneficiary countries.

Foreign. "Foreign" means of a country other than the United States or a CBTPA beneficiary country.

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

Knit-to-shape. The term "knit-to-shape" applies to any apparel ar-

ticle of which 50 percent or more of the exterior surface area is formed by major parts that have been knitted or crocheted directly to the shape used in the apparel article, with no consideration being given to patch pockets, appliques, or the like. Minor cutting, trimming, or sewing of those major parts will not affect the determination of whether an apparel article is "knit-to-shape."

Made in one or more CBTPA beneficiary countries. "Made in one or more CBTPA beneficiary countries" when used with reference to non-underwear t-shirts means cut in one or more CBTPA beneficiary countries and wholly assembled in one or more CBTPA beneficiary countries.

Major parts. "Major parts" means integral components of an apparel article but does not include collars, cuffs, waistbands, plackets, pockets, linings, paddings, trim, accessories, or similar parts or components.

NAFTA. "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential treatment. "Preferential treatment" means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States free of duty and free of any quantitative restrictions, limitations, or consultation levels as provided in 19 U.S.C. 2703(b)(2).

Wholly assembled in one or more CBTPA beneficiary countries. "Wholly assembled in one or more CBTPA beneficiary countries" when used in the context of a textile or apparel article has reference to a joining together of all components (including thread, decorative embellishments, buttons, zippers, or similar components) that occurred only in one or more CBTPA beneficiary countries.

Wholly formed. "Wholly formed," when used with reference to yarns or thread, means that all of the production processes, starting with the extrusion of filament or the spinning of all fibers into yarn or both and ending with a yarn or plied yarn, took place in a single country, and, when used with reference to fabric(s), means that all of the production processes, starting with polymers, fibers, filaments, textile strips, yarns, twine, cordage, rope, or strips of fabric and ending with a fabric by a weaving, knitting, needling, tufting, felting, entangling or other process, took place in a single country.

§ 10.223 Articles eligible for preferential treatment.

(a) *General.* The preferential treatment referred to in § 10.221 applies to the following textile and apparel articles that are imported directly into the customs territory of the United States from a CBTPA beneficiary country:

(1) Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602

or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under subheading 9802.00.80 of the HTSUS;

(2) Apparel articles assembled in one or more CBTPA beneficiary countries from fabrics wholly formed and cut in the United States, from yarns wholly formed in the United States, (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed and cut in the United States) that are entered under Chapter 61 or 62 of the HTSUS, if, after that assembly, the articles would have qualified for entry under subheading 9802.00.80 of the HTSUS but for the fact that the articles were embroidered or subjected to stone-washing, enzyme-washing, acid washing, perma-pressing, oven-baking, bleaching, garment-dyeing, screen printing, or other similar processes in a CBTPA beneficiary country;

(3) Apparel articles (other than articles described in paragraph (a)(12) of this section) cut in one or more CBTPA beneficiary countries from fabric wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), if those articles are assembled in one or more CBTPA beneficiary countries with thread formed in the United States;

(4) Apparel articles knit to shape (other than socks provided for in heading 6115 of the HTSUS) in a CBTPA beneficiary country from yarns wholly formed in the United States, and knit apparel articles (other than non-underwear t-shirts) cut and wholly assembled in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries or the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are formed in one or more CBTPA beneficiary countries);

(5) Non-underwear t-shirts, classifiable under subheadings 6109.10.00 and 6109.90.10 of the HTSUS, made in one or more CBTPA beneficiary countries from fabric formed in one or more CBTPA beneficiary countries from yarns wholly formed in the United States;

(6) Brassieres classifiable under subheading 6212.10 of the HTSUS, cut and sewn or otherwise assembled in the United States, or one or more CBTPA beneficiary countries, or both;

(7) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries, from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries, to the extent that apparel articles of those fabrics or yarn would be eligible for preferential treatment, without regard to the source of the fabrics or yarn, under Annex 401 of the NAFTA;

(8) Apparel articles that are both cut (or knit-to-shape) and sewn or otherwise assembled in one or more CBTPA beneficiary countries,

from fabrics or yarn that is not formed in the United States or in one or more CBTPA beneficiary countries and that is not described in paragraph (a)(7) of this section, to the extent that the President has determined that the fabrics or yarn cannot be supplied by the domestic industry in commercial quantities in a timely manner and has proclaimed the preferential treatment provided under paragraph (a)(7) of this section;

(9) A handloomed, handmade, or folklore textile or apparel article of a CBTPA beneficiary country that the President and representatives of the CBTPA beneficiary country mutually agree is a handloomed, handmade, or folklore article and that is certified as a handloomed, handmade, or folklore article by the competent authority of the CBTPA beneficiary country;

(10) Textile luggage assembled in a CBTPA beneficiary country from fabric wholly formed and cut in the United States, from yarns wholly formed in the United States, that is entered under subheading 9802.00.80 of the HTSUS;

(11) Textile luggage assembled from fabric cut in a CBTPA beneficiary country from fabric wholly formed in the United States from yarns wholly formed in the United States; and

(12) Knitted or crocheted apparel articles (other than non-underwear t-shirts described in paragraph (a)(5) of this section) cut and wholly assembled in one or more CBTPA beneficiary countries or the United States from fabrics wholly formed in the United States from yarns wholly formed in the United States (including fabrics not formed from yarns, if those fabrics are classifiable under heading 5602 or 5603 of the HTSUS and are wholly formed in the United States), provided that the assembly is with thread formed in the United States.

(b) *Special rules for certain component materials*–(1) *Foreign findings, trimmings, interlinings, fibers and yarns*B(i) *General.* An article otherwise described under paragraph (a) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains:

(A) Findings and trimmings of foreign origin, if the value of those findings and trimmings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "findings and trimmings" include, but are not limited to, hooks and eyes, snaps, buttons, "bow buds," decorative lace trim, elastic strips (but only if they are each less than 1 inch in width and are used in the production of brassieres), zippers (including zipper tapes), labels, and sewing thread except in the case of an article described in paragraph (a)(3) of this section;

(B) Interlinings of foreign origin, if the value of those interlinings does not exceed 25 percent of the cost of the components of the assembled article. For purposes of this section "interlinings" include only a chest type plate, a "hymo" piece, or "sleeve header," of woven or weft-inserted warp knit construction and of coarse animal hair or man-made filaments;

(C) Any combination of findings and trimmings of foreign origin and interlinings of foreign origin, if the total value of those findings and trimmings and interlinings does not exceed 25 percent of the cost of the components of the assembled article; or

(D) Fibers or yarns not wholly formed in the United States or in one or more CBTPA beneficiary countries if the total weight of all those fibers and yarns is not more than 7 percent of the total weight of the article, except in the case of any apparel article described in paragraph (a)(1) through (a)(5) of this section containing elastomeric yarns which will be eligible for preferential treatment only if those yarns are wholly formed in the United States.

(ii) *Treatment of fibers and yarns as findings or trimmings.* If any fibers or yarns not wholly formed in the United States or one or more beneficiary countries are used in an article as a finding or trimming described in paragraph (b)(1)(i)(A) of this section, the fibers or yarns will be considered to be a finding or trimming for purposes of paragraph (b)(1)(i) of this section.

(2) *Special rule for nylon filament yarn.* An article otherwise described under paragraph (a)(1), (a)(2) or (a)(3) of this section will not be ineligible for the preferential treatment referred to in § 10.221 because the article contains nylon filament yarn (other than elastomeric yarn) that is classifiable under subheading 5402.10.30, 5402.10.60, 5402.31.30, 5402.31.60, 5402.32.30, 5402.32.60, 5402.41.10, 5402.41.90, 5402.51.00, or 5402.61.00 of the HTSUS duty-free from Canada, Mexico or Israel.

(c) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if the(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the

producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.224 Certificate of Origin.

(a) *General.* A Certificate of Origin must be employed to certify that a textile or apparel article being exported from a CBTPA beneficiary country to the United States qualifies for the preferential treatment referred to in § 10.221. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country in the form specified in paragraph (b) of this section. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(1) Its reasonable reliance on the producer's written representation that the article qualifies for preferential treatment; or

(2) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

(b) *Form of Certificate.* The Certificate of Origin referred to in paragraph (a) of this section must be in the following format:

Caribbean Basin Trade Partnership Act
Textile Certificate of Origin

1. Exporter Name & Address		2. Producer Name & Address
3. Importer Name & Address		6.U.S./Caribbean Fabric Producer Name & Address
4. Description of Article	5. Preference Group	7. U.S./Caribbean Yarn Producer Name & Address
		8. U.S. Thread Producer Name & Address
		9. Name of Handloomed, Handmade, or Folklore Article
10. Name of Preference Group G Fabric or Yarn:		

Preference Groups:

A: Apparel assembled from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(1)].

B: Apparel assembled and further processed from U.S.-formed and cut fabric from U.S. yarn [19 CFR 10.223(a)(2)].

C: Non-knit apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(3)].

D: Apparel knit to shape from U.S. yarn and knit apparel cut and assembled from regional or U.S. fabric from U.S. yarn [19 CFR 10.223(a)(4)].

E: Non-underwear t-shirts made of regional fabric from U.S. yarn [19 CFR 10.223(a)(5)].

F: Brassieres cut and assembled in the United States and/or one or more CBTPA beneficiary countries [19 CFR 10.223(a)(6)].

G: Apparel cut and assembled in one or more CBTPA beneficiary countries from fabrics or yarn not formed in the United States or one or more CBTPA beneficiary countries (as identified in NAFTA) or designated as not available in commercial quantities in the United States [19 CFR 10.223(a)(7) or (a)(8)].

H: Handloomed, handmade, or folklore articles [19 CFR 10.223(a)(9)].

I: Luggage assembled from U.S.-formed and cut fabric from U.S. yarn. [19 CFR 10.223(a)(10)].

J: Luggage cut and assembled from U.S. fabric from U.S. yarn [19 CFR 10.223(a)(11)].

K: Knitted or crocheted apparel cut and assembled from U.S. fabric from U.S. yarn and thread. [19 CFR 10.223(a)(12)].

I certify that the information on this document is complete and accurate and I assume the responsibility for proving such representations. I understand that I am liable for any false statements or material omissions made on or in connection with this document.
I agree to maintain, and present upon request, documentation necessary to support this certificate.

12. Authorized Signature		13. Company
14. Name (Print or Type)		15. Title
16a.Date(DD/MM/YY)	16b.Blanket Period From: To:	17. Telephone Number Facsimile Number

(c) *Preparation of Certificate.* The following rules will apply for purposes of completing the Certificate of Origin set forth in paragraph (b) of this section:

(1) Blocks 1 through 5 pertain only to the final article exported to the United States for which preferential treatment may be claimed;

(2) Block 1 should state the legal name and address (including country) of the exporter;

(3) Block 2 should state the legal name and address (including country) of the producer. If there is more than one producer, attach a list stating the legal name and address (including country) of all additional producers. If this information is confidential, it is acceptable to state "available to Customs upon request" in block 2. If the producer and the exporter are the same, state "same" in block 2;

(4) Block 3 should state the legal name and address (including country) of the importer;

(5) Block 4 should provide a full description of each article. The description should be sufficient to relate it to the invoice description and to the description of the article in the international Harmonized System. Include the invoice number as shown on the commercial invoice or, if the invoice number is not known, include another unique reference number such as the shipping order number;

(6) In block 5, insert the letter that designates the preference group which applies to the article according to the description contained in the CFR provision cited on the Certificate for that group;

(7) Blocks 6 through 10 must be completed only when the block in question calls for information that is relevant to the preference group identified in block 5;

(8) Block 6 should state the legal name and address (including country) of the fabric producer;

(9) Block 7 should state the legal name and address (including country) of the yarn producer;

(10) Block 8 should state the legal name and address (including country) of the thread producer;

(11) Block 9 should state the name of the folklore article or should state that the article is handloomed or handmade;

(12) Block 10, which should be completed only when preference group "G" is inserted in block 5, should state the name of the fabric or yarn that is not formed in the United States or a CBTPA beneficiary country or that is not available in commercial quantities in the United States;

(13) Block 16a should reflect the date on which the Certificate was completed and signed;

(14) Block 16b should be completed if the Certificate is intended to cover multiple shipments of identical articles as described in block 4 that are imported into the United States during a specified period of up to one year (see § 10.226(b)(4)(ii)). The "from" date is the date on which the Certificate became applicable to the article covered by the blanket Certificate (this date may be prior to the date reflected in

block 16a). The "to" date is the date on which the blanket period expires; and

(15) The Certificate may be printed and reproduced locally. If more space is needed to complete the Certificate, attach a continuation sheet.

§ 10.225 Filing of claim for preferential treatment.

(a) *Declaration.* In connection with a claim for preferential treatment for a textile or apparel article described in § 10.223, the importer must make a written declaration that the article qualifies for that treatment. In the case of an article described in § 10.223(a)(1) or (a)(10), the written declaration should be made by including on the entry summary, or equivalent documentation, the symbol "R" as a prefix to the subheading within Chapter 98 of the HTSUS under which the article is classified, and, in the case of any article described in § 10.223(a)(2) through (a)(9) and (a)(11), the inclusion on the entry summary, or equivalent documentation, of the subheading within Chapter 98 of the HTSUS under which the article is classified will constitute the written declaration. Except in any of the circumstances described in § 10.226(d)(1), the declaration required under this paragraph must be based on an original Certificate of Origin that has been completed and properly executed in accordance with § 10.224, that covers the article being imported, and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.226 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential treatment for an article under § 10.225 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.225(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential treatment on a textile or apparel article under § 10.225(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be in writing or must be transmitted electronically pursuant to any electronic data interchange system authorized by Customs

for that purpose;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified blanket period, not to exceed 12 months, set out in the Certificate by the exporter. For purposes of this paragraph and § 10.224(c)(14), "identical articles" means articles that are the same in all material respects, including physical characteristics, quality, and reputation.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required* B(1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential treatment under the CBTPA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name

_____
Title

_____
Address

_____
Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.224 through 10.226, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from the same exporter and consigned to the same person.

§ 10.227 Verification and justification of claim for preferential treatment.

(a) *Verification by Customs.* A claim for preferential treatment made under § 10.225, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.226, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential treatment. A verification of a claim for preferential treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a CBTPA beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a CBTPA beneficiary country to document the use of

U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential treatment under § 10.225, the importer:

(1) Must have records that explain how the importer came to the conclusion that the textile or apparel article qualifies for preferential treatment. Those records must include documents that support a claim that the article in question qualifies for preferential treatment because it is specifically described in one of the provisions under § 10.223(a). If the importer is claiming that the article incorporates fabric or yarn that was wholly formed in the United States, the importer must have records that identify the U.S. producer of the fabric or yarn. A properly completed Certificate of Origin in the form set forth in § 10.224(b) is a record that would serve these purposes;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificates of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.223(c)(3)(i) through (iii) were met; and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential treatment.

9. Part 10 is amended by adding a new center heading followed by new §§ 10.231 through 10.237 to read as follows:

NON-TEXTILE ARTICLES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

Sec.

NON-TEXTILE ARTICLES UNDER THE UNITED STATES-

CARIBBEAN BASIN TRADE PARTNERSHIP ACT

§ 10.231 Applicability.

Title II of Public Law 106-200 (114 Stat. 251), entitled the United States-Caribbean Trade Partnership Act (CBTPA), amended section 213(b) of the Caribbean Basin Economic Recovery Act (the CBERA, 19 U.S.C. 2701-2707) to authorize the President to extend additional trade benefits to countries that have been designated as beneficiary countries under the CBERA. Section 213(b)(3) of the CBERA (19 U.S.C. 2703(b)(3)) provides for special preferential tariff treatment of certain non-textile articles that are otherwise excluded from duty-free treatment under the CBERA. The provisions of §§ 10.231-10.237 of this part set forth the legal requirements and procedures that apply for purposes of obtaining preferential tariff treatment pursuant to CBERA section 213(b)(3).

§ 10.232 Definitions.

When used in §§ 10.231 through 10.237, the following terms have the meanings indicated:

CBERA. "CBERA" means the Caribbean Basin Economic Recovery Act, 19 U.S.C. 2701-2707.

CBTPA beneficiary country. "CBTPA beneficiary country" means a beneficiary country" as defined in § 10.191(b)(1) for purposes of the CBERA which the President also has designated as a beneficiary country for purposes of preferential duty treatment of articles under 19 U.S.C. 2703(b)(3).

CBTPA originating good. "CBTPA originating good" means a good that meets the rules of origin for a good as set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter and as applied under § 10.233(b).

HTSUS. "HTSUS" means the Harmonized Tariff Schedule of the United States.

NAFTA. "NAFTA" means the North American Free Trade Agreement entered into by the United States, Canada, and Mexico on December 17, 1992.

Preferential tariff treatment. "Preferential tariff treatment" when used with reference to an imported article means entry, or withdrawal from warehouse for consumption, in the customs territory of the United States with duty and other tariff treatment that is identical to the tariff treatment that would be accorded at that time under Annex 302.2 of the NAFTA to an imported article described in the same 8-digit subheading of the HTSUS that is a good of Mexico.

§ 10.233 Articles eligible for preferential tariff treatment.

(a) *General.* The preferential tariff treatment referred to in § 10.231 applies to any of the following articles, provided that the article in question is a CBTPA originating good, is imported directly into the customs territory of the United States from a CBTPA beneficiary country, and is not accorded duty-free treatment under U.S. Note 2(b),

Subchapter II, Chapter 98, HTSUS (see § 10.26):

(1) Footwear not designated on August 5, 1983, as eligible articles for the purpose of the Generalized System of Preferences under Title V, Trade Act of 1974, as amended (19 U.S.C. 2461 through 2467);

(2) Tuna, prepared or preserved in any manner, in airtight containers;

(3) Petroleum, or any product derived from petroleum, provided for in headings 2709 and 2710 of the HTSUS;

(4) Watches and watch parts (including cases, bracelets, and straps), of whatever type including, but not limited to, mechanical, quartz digital or quartz analog, if those watches or watch parts contain any material which is the product of any country with respect to which HTSUS column 2 rates of duty apply; and

(5) Articles to which reduced rates of duty apply under § 10.198a, except as otherwise provided in paragraph (c) of this section.

(b) *Application of NAFTA rules of origin.* In determining whether an article is a CBTPA originating good for purposes of paragraph (a) of this section, application of the provisions of General Note 12 of the HTSUS and the appendix to part 181 of this chapter will be subject to the following rules:

(1) No country other than the United States and a CBTPA beneficiary country may be treated as being a party to the NAFTA;

(2) Any reference to trade between the United States and Mexico will be deemed to refer to trade between the United States and a CBTPA beneficiary country;

(3) Any reference to a party will be deemed to refer to a CBTPA beneficiary country or the United States; and

(4) Any reference to parties will be deemed to refer to any combination of CBTPA beneficiary countries or to the United States and one or more CBTPA beneficiary countries (or any combination involving the United States and CBTPA beneficiary countries).

(c) *Duty reductions for leather-related articles.* If, after it is determined that an article described in paragraph (a)(5) of this section qualifies as a CBTPA originating good and is eligible for preferential tariff treatment under this section, it is determined that the article in question also would otherwise qualify for a reduced rate of duty under § 10.198a and that reduced rate of duty is lower than the rate of duty that would apply under this section, that lower rate of duty will apply to the article for purposes of preferential tariff treatment under this section.

(d) *Imported directly defined.* For purposes of paragraph (a) of this section, the words "imported directly" mean:

(1) Direct shipment from any CBTPA beneficiary country to the United States without passing through the territory of any country that is not a CBTPA beneficiary country;

(2) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, the articles in the shipment do not enter into the

commerce of any country that is not a CBTPA beneficiary country while en route to the United States and the invoices, bills of lading, and other shipping documents show the United States as the final destination; or

(3) If the shipment is from any CBTPA beneficiary country to the United States through the territory of any country that is not a CBTPA beneficiary country, and the invoices and other documents do not show the United States as the final destination, the articles in the shipment upon arrival in the United States are imported directly only if they:

(i) Remained under the control of the customs authority of the intermediate country;

(ii) Did not enter into the commerce of the intermediate country except for the purpose of sale other than at retail, and the port director is satisfied that the importation results from the original commercial transaction between the importer and the producer or the producer's sales agent; and

(iii) Were not subjected to operations other than loading or unloading, and other activities necessary to preserve the articles in good condition.

§ 10.234 Certificate of Origin.

A Certificate of Origin as specified in § 10.236 must be employed to certify that an article described in § 10.233(a)(1) through (5) being exported from a CBTPA beneficiary country to the United States qualifies for the preferential tariff treatment referred to in § 10.231. The Certificate of Origin must be prepared by the exporter in the CBTPA beneficiary country. Where the CBTPA beneficiary country exporter is not the producer of the article, that exporter may complete and sign a Certificate of Origin on the basis of:

(a) Its reasonable reliance on the producer's written representation that the article qualifies for preferential tariff treatment; or

(b) A completed and signed Certificate of Origin for the article voluntarily provided to the exporter by the producer.

§ 10.235 Filing of claim for preferential tariff treatment.

(a) *Declaration.* In connection with a claim for preferential tariff treatment for an article described in § 10.233(a)(1) through (5), the importer must make a written declaration that the article qualifies for that treatment. The written declaration should be made by including on the entry summary, or equivalent documentation, the symbol "R" as a prefix to the subheading of the HTSUS under which the article in question is classified. Except in any of the circumstances described in § 10.236(d)(1), the declaration required under this paragraph must be based on a complete and properly executed original Certificate of Origin that covers the article being imported and that is in the possession of the importer.

(b) *Corrected declaration.* If, after making the declaration required

under paragraph (a) of this section, the importer has reason to believe that a Certificate of Origin on which a declaration was based contains information that is not correct, the importer must within 30 calendar days after the date of discovery of the error make a corrected declaration and pay any duties that may be due. A corrected declaration will be effected by submission of a letter or other written statement to the Customs port where the declaration was originally filed.

§ 10.236 Maintenance of records and submission of Certificate by importer.

(a) *Maintenance of records.* Each importer claiming preferential tariff treatment for an article under § 10.235 must maintain in the United States, in accordance with the provisions of part 163 of this chapter, all records relating to the importation of the article. Those records must include the original Certificate of Origin referred to in § 10.235(a) and any other relevant documents or other records as specified in § 163.1(a) of this chapter.

(b) *Submission of Certificate.* An importer who claims preferential tariff treatment on an article under § 10.235(a) must provide, at the request of the port director, a copy of the Certificate of Origin pertaining to the article. A Certificate of Origin submitted to Customs under this paragraph:

(1) Must be on Customs Form 450, including privately-printed copies of that Form, or, as an alternative to Customs Form 450, in an approved computerized format or other medium or format as is approved by the Office of Field Operations, U.S. Customs Service, Washington, DC 20229. An alternative format must contain the same information and certification set forth on Customs Form 450;

(2) Must be signed by the exporter or by the exporter's authorized agent having knowledge of the relevant facts;

(3) Must be completed either in the English language or in the language of the country from which the article is exported. If the Certificate is completed in a language other than English, the importer must provide to Customs upon request a written English translation of the Certificate; and

(4) May be applicable to:

(i) A single importation of an article into the United States, including a single shipment that results in the filing of one or more entries and a series of shipments that results in the filing of one entry; or

(ii) Multiple importations of identical articles into the United States that occur within a specified period, not to exceed 12 months, set out in the Certificate by the exporter.

(c) *Correction and nonacceptance of Certificate.* If the port director determines that a Certificate of Origin is illegible or defective or has not been completed in accordance with paragraph (b) of this section, the importer will be given a period of not less than five working days to submit a corrected Certificate. A Certificate will not be accepted in connection with subsequent importations during a period referred to

in paragraph (b)(4)(ii) of this section if the port director determined that a previously imported identical article covered by the Certificate did not qualify for preferential treatment.

(d) *Certificate not required* – (1) *General.* Except as otherwise provided in paragraph (d)(2) of this section, an importer is not required to have a Certificate of Origin in his possession for:

(i) An importation of an article for which the port director has in writing waived the requirement for a Certificate of Origin because the port director is otherwise satisfied that the article qualifies for preferential tariff treatment;

(ii) A non-commercial importation of an article; or

(iii) A commercial importation of an article whose value does not exceed US$2,500, provided that, unless waived by the port director, the producer, exporter, importer or authorized agent includes on, or attaches to, the invoice or other document accompanying the shipment the following signed statement:

I hereby certify that the article covered by this shipment qualifies for preferential tariff treatment under the CBTPA.

Check One:
( ) Producer
( ) Exporter
( ) Importer
( ) Agent

_____
Name

_____
Title

_____
Address

_____
Signature and Date

(2) *Exception.* If the port director determines that an importation described in paragraph (d)(1) of this section forms part of a series of importations that may reasonably be considered to have been undertaken or arranged for the purpose of avoiding a Certificate of Origin requirement under §§ 10.234 through 10.236, the port director will notify the importer in writing that for that importation the importer must have in his possession a valid Certificate of Origin to support the claim for preferential tariff treatment. The importer will have 30 calendar days from the date of the written notice to obtain a valid Certificate of Origin, and a failure to timely obtain the Certificate of Origin will result in denial of the claim for preferential tariff treatment. For purposes of this paragraph, a "series of importations" means two or more entries covering articles arriving on the same day from

the same exporter and consigned to the same person.

§ 10.237 Verification and justification of claim for preferential tariff treatment.

(a) *Verification by Customs.* A claim for preferential tariff treatment made under § 10.235, including any statements or other information contained on a Certificate of Origin submitted to Customs under § 10.236, will be subject to whatever verification the port director deems necessary. In the event that the port director for any reason is prevented from verifying the claim, the port director may deny the claim for preferential tariff treatment. A verification of a claim for preferential tariff treatment may involve, but need not be limited to, a review of:

(1) All records required to be made, kept, and made available to Customs by the importer or any other person under part 163 of this chapter;

(2) Documentation and other information in a CBTPA beneficiary country regarding the country of origin of an article and its constituent materials, including, but not limited to, production records, information relating to the place of production, the number and identification of the types of machinery used in production, and the number of workers employed in production; and

(3) Evidence in a CBTPA beneficiary country to document the use of U.S. materials in the production of the article in question, such as purchase orders, invoices, bills of lading and other shipping documents, and customs import and clearance documents.

(b) *Importer requirements.* In order to make a claim for preferential tariff treatment under § 10.235, the importer:

(1) Must have records that explain how the importer came to the conclusion that the article qualifies for preferential tariff treatment. Those records must include documents that support a claim that the article in question qualifies for preferential tariff treatment because it meets the applicable rule of origin set forth in General Note 12, HTSUS, and in the appendix to part 181 of this chapter. A properly completed Certificate of Origin in the form prescribed in § 10.236(b) is a record that would serve this purpose;

(2) Must establish and implement internal controls which provide for the periodic review of the accuracy of the Certificate of Origin or other records referred to in paragraph (b)(1) of this section;

(3) Must have shipping papers that show how the article moved from the CBTPA beneficiary country to the United States. If the imported article was shipped through a country other than a CBTPA beneficiary country and the invoices and other documents from the CBTPA beneficiary country do not show the United States as the final destination, the importer also must have documentation that demonstrates that the conditions set forth in § 10.233(d)(3)(i) through (iii) were met;

and

(4) Must be prepared to explain, upon request from Customs, how the records and internal controls referred to in paragraphs (b)(1) through (b)(3) of this section justify the importer's claim for preferential tariff treatment.

PART 163 - RECORDKEEPING

1. The authority citation for Part 163 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1484, 1508, 1509, 1510, 1624.

2. The Appendix to Part 163 is amended by adding two new listings under section IV in numerical order to read as follows:

APPENDIX TO PART 163 – INTERIM (a)(1)(A) list

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IV. * * *

§ 10.226 CBTPA Textile Certificate of Origin and supporting records
§ 10.236 CBTPA Non-textile Certificate of Origin and supporting records

* * * * *

RAYMOND W. KELLY
Commissioner of Customs

Approved: September 29, 2000

TIMOTHY E. SKUD
Acting Deputy Assistant Secretary of the Treasury

[Published in the **Federal Register**, October 5, 2000 (65 FR 59650)]

(T. D. 00 - 69)

ANNUAL USER FEE FOR CUSTOMS BROKER PERMIT AND NATIONAL PERMIT; GENERAL NOTICE

AGENCY: U.S. Customs Service Department of the Treasury

ACTION: Notice of due date for broker user fee

SUMMARY: This is to advise Customs brokers that for 2001 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association or corporate broker is due by January 19, 2001. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: January 19, 2001.

FOR FURTHER INFORMATION CONTACT: Michael S. Craig, Broker Management (202) 927-0380.

SUPPLEMENTARY INFORMATION: Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub.L. 99-272) established that an annual user fee of $125 is to be assessed for each Customs broker permit and National permit held by an individual, partnership, association, or corporation. This fee is set forth in the Customs Regulations in section 111.96 (19 CFR 111.96).

Customs Regulations provides that this fee is payable for each calendar year in each broker district where the broker was issued a permit to do business by the due date which will be published in the **Federal Register** annually. Broker districts are defined in the General Notice published in the Federal Register, Volume 60, No.187, September 27, 1995.

Section 1893 of the Tax Reform Act of 1986 (Pub.L. 99-514), provides that notices of the date on which a payment is due of the user fee for each broker permit shall be published by the Secretary of Treasury in the Federal Register by no later than 60 days before such due date. This document notifies brokers that for 2001, the due date for payment of the user fee is January 19, 2001. It is expected that annual user fees for brokers for subsequent years will be due on or about the twentieth of January of each year.

Dated: October 4, 2000

BONNI G. TISCHLER
Assistant Commissioner
Office of Field Operations

(T.D. 00-70)

FOREIGN CURRENCIES

QUARTERLY RATES OF EXCHANGE: OCTOBER 1, 2000 THROUGH DECEMBER 31, 2000

Listed below are the buying rates certified for the Quarter to the Secretary of the Treasury by the Federal Reserve Bank of New York under Provision of 31 US 5151. These quarterly rates are applicable throughout the quarter except when the certified daily rates vary by 5% or more. Such daily variances are published by the cie on a weekly basis.

Country	Currency	U.S. Dollars
Australia	Dollar	$0.545000
Brazil	Real	0.541419
Canada	Dollar	0.661901
China, P.R.	Yaun	0.120788
Denmark	Krone	0.118050
Hong Kong	Dollar	0.128254
India	Rupee	0.021692
Iran	Rial	N/A
Israel	New Sheqel	N/A
Japan	Yen	0.009190
Malaysia	Ringgit	0.263158
Mexico	New Peso	0.106298
New Zealand	Dollar	0.403500
Norway	Kone	0.109566
Philippines	Peso	N/A
Singapore	Dollar	0.574053
South Africa	Rand	0.138937
Sri Lanka	Rupee	0.012626
Sweden	Krona	0.103164
Switzerland	Franc	0.577301
Thailand	Baht	0.023641
United Kingdom	Pound Sterling	1.467500
Venezuela	Bolivar	0.001447

Dated: October 2, 2000

RICHARD B. LAMAN
Chief,
Customs Information Exchange

(T.D. 00–71)

FOREIGN CURRENCIES

DAILY RATES FOR COUNTRIES NOT ON QUARTERLY LIST FOR SEPTEMBER, 2000

The Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, has certified buying rates for the dates and foreign buying rates, are published for the information and use of Customs officers and other concerned pursuant to Part 159, Subpart C, Customs Regulations (19 CRF 159, Subpart C).

Holiday(s): September 4, 2000.

Austria Schilling:	
September 1, 2000	$0.065355
September 2, 2000	.065355
September 3, 2000	.065355
September 4, 2000	.065355
September 5, 2000	.064504
September 6, 2000	.063240
September 7, 2000	.063516
September 8, 2000	.062964
September 9, 2000	.062964
September 10, 2000	.062964
September 11, 2000	.062673
September 12, 2000	.062470
September 13, 2000	.062789
September 14, 2000	.062622
September 15, 2000	.062295
September 16, 2000	.062295
September 17, 2000	.062295
September 18, 2000	.061939
September 19, 2000	.061874
September 20, 2000	.061496
September 21, 2000	.062193
September 22, 2000	.063901
September 23, 2000	.063901
September 24, 2000	.063901
September 25, 2000	.063502
September 26, 2000	.064061
September 27, 2000	.063988
September 28, 2000	.064141
September 29, 2000	.064221
September 30, 2000	.064221
Belgium Franc:	
September 1, 2000	$0.022293
September 2, 2000	.022293
September 3, 2000	.022293
September 4, 2000	.022293
September 5, 2000	.022003
September 6, 2000	.021572
September 7, 2000	.021666

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

September 8, 2000	.021477
September 9, 2000	.021477
September 10, 2000	.021477
September 11, 2000	.021378
September 12, 2000	.021309
September 13, 2000	.021418
September 14, 2000	.021361
September 15, 2000	.021249
September 16, 2000	.021249
September 17, 2000	.021249
September 18, 2000	.021128
September 19, 2000	.021106
September 20, 2000	.020977
September 21, 2000	.021215
September 22, 2000	.021797
September 23, 2000	.021797
September 24, 2000	.021797
September 25, 2000	.021661
September 26, 2000	.021852
September 27, 2000	.021827
September 28, 2000	.021879
September 29, 2000	.021906
September 30, 2000	.021906

Finland Markka:

September 1, 2000	$0.151251
September 2, 2000	.151251
September 3, 2000	.151251
September 4, 2000	.151251
September 5, 2000	.149284
September 6, 2000	.146357
September 7, 2000	.146996
September 8, 2000	.145718
September 9, 2000	.145718
September 10, 2000	.145718
September 11, 2000	.145045
September 12, 2000	.144574
September 13, 2000	.145314
September 14, 2000	.144928
September 15, 2000	.144171
September 16, 2000	.144171
September 17, 2000	.144171
September 18, 2000	.143347
September 19, 2000	.143195
September 20, 2000	.142321
September 21, 2000	.143935
September 22, 2000	.147888
September 23, 2000	.147888
September 24, 2000	.147888
September 25, 2000	.146963
September 26, 2000	.148258
September 27, 2000	.148089
September 28, 2000	.148443

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

September 29, 2000	.148628
September 30, 2000	.148628

France Franc:

September 1, 2000	$0.137907
September 2, 2000	.137097
September 3, 2000	.137097
September 4, 2000	.137097
September 5, 2000	.135314
September 6, 2000	.132661
September 7, 2000	.133240
September 8, 2000	.132082
September 9, 2000	.132082
September 10, 2000	.132082
September 11, 2000	.131472
September 12, 2000	.131045
September 13, 2000	.131716
September 14, 2000	.131365
September 15, 2000	.130679
September 16, 2000	.130679
September 17, 2000	.130679
September 18, 2000	.129932
September 19, 2000	.129795
September 20, 2000	.129002
September 21, 2000	.130466
September 22, 2000	.134048
September 23, 2000	.134048
September 24, 2000	.134048
September 25, 2000	.133210
September 26, 2000	.134384
September 27, 2000	.134231
September 28, 2000	.134552
September 29, 2000	.134719
September 30, 2000	.134719

Germany Deutsche Mark:

September 1, 2000	$0.459805
September 2, 2000	.459805
September 3, 2000	.459805
September 4, 2000	.459805
September 5, 2000	.453823
September 6, 2000	.444926
September 7, 2000	.446869
September 8, 2000	.442983
September 9, 2000	.442983
September 10, 2000	.442983
September 11, 2000	.440938
September 12, 2000	.439507
September 13, 2000	.441756
September 14, 2000	.440580
September 15, 2000	.438279
September 16, 2000	.438279
September 17, 2000	.438279

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

September 18, 2000	.435774
September 19, 2000	.435314
September 20, 2000	.432655
September 21, 2000	.437564
September 22, 2000	.449579
September 23, 2000	.449579
September 24, 2000	.449579
September 25, 2000	.446767
September 26, 2000	.450704
September 27, 2000	.450193
September 28, 2000	.451266
September 29, 2000	.451829
September 30, 2000	.451829

Greece Drachma:

September 1, 2000	$0.002664
September 2, 2000	.002664
September 3, 2000	.002664
September 4, 2000	.002664
September 5, 2000	.002626
September 6, 2000	.002572
September 7, 2000	.002584
September 8, 2000	.002561
September 9, 2000	.002561
September 10, 2000	.002561
September 11, 2000	.002551
September 12, 2000	.002540
September 13, 2000	.002554
September 14, 2000	.002544
September 15, 2000	.002532
September 16, 2000	.002532
September 17, 2000	.002532
September 18, 2000	.002514
September 19, 2000	.002512
September 20, 2000	.002497
September 21, 2000	.002523
September 22, 2000	.002591
September 23, 2000	.002591
September 24, 2000	.002591
September 25, 2000	.002574
September 26, 2000	.002598
September 27, 2000	.002597
September 28, 2000	.002601
September 29, 2000	.002602
September 30, 2000	.002602

Ireland Pound:

September 1, 2000	$1.141875
September 2, 2000	1.141875
September 3, 2000	1.141875
September 4, 2000	1.141875
September 5, 2000	1.127020
September 6, 2000	1.104926

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

September 7, 2000	1.109751
September 8, 2000	1.100101
September 9, 2000	1.100101
September 10, 2000	1.100101
September 11, 2000	1.095022
September 12, 2000	1.091467
September 13, 2000	1.097054
September 14, 2000	1.094133
September 15, 2000	1.088419
September 16, 2000	1.088419
September 17, 2000	1.088419
September 18, 2000	1.082198
September 19, 2000	1.081055
September 20, 2000	1.074452
September 21, 2000	1.086642
September 22, 2000	1.116481
September 23, 2000	1.116481
September 24, 2000	1.116481
September 25, 2000	1.109497
September 26, 2000	1.119274
September 27, 2000	1.118004
September 28, 2000	1.120671
September 29, 2000	1.122068
September 30, 2000	1.122068

Italy Lira:

September 1, 2000	$0.000464
September 2, 2000	.000464
September 3, 2000	.000464
September 4, 2000	.000464
September 5, 2000	.000458
September 6, 2000	.000449
September 7, 2000	.000451
September 8, 2000	.000447
September 9, 2000	.000447
September 10, 2000	.000447
September 11, 2000	.000445
September 12, 2000	.000444
September 13, 2000	.000446
September 14, 2000	.000445
September 15, 2000	.000443
September 16, 2000	.000443
September 17, 2000	.000443
September 18, 2000	.000440
September 19, 2000	.000440
September 20, 2000	.000437
September 21, 2000	.000442
September 22, 2000	.000454
September 23, 2000	.000454
September 24, 2000	.000454
September 25, 2000	.000451
September 26, 2000	.000455
September 27, 2000	.000455

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

September 28, 2000	.000456
September 29, 2000	.000456
September 30, 2000	.000456

Luxembourg Franc:

September 1, 2000	$0.022293
September 2, 2000	.022293
September 3, 2000	.022293
September 4, 2000	.022293
September 5, 2000	.022003
September 6, 2000	.021572
September 7, 2000	.021666
September 8, 2000	.021477
September 9, 2000	.021477
September 10, 2000	.021477
September 11, 2000	.021378
September 12, 2000	.021309
September 13, 2000	.021418
September 14, 2000	.021361
September 15, 2000	.021249
September 16, 2000	.021249
September 17, 2000	.021249
September 18, 2000	.021128
September 19, 2000	.021106
September 20, 2000	.020977
September 21, 2000	.021215
September 22, 2000	.021797
September 23, 2000	.021797
September 24, 2000	.021797
September 25, 2000	.021661
September 26, 2000	.021862
September 27, 2000	.021827
September 28, 2000	.021879
September 29, 2000	.021906
September 30, 2000	.021906

Netherlands Guilder:

September 1, 2000	$0.408085
September 2, 2000	.408085
September 3, 2000	.408085
September 4, 2000	.408085
September 5, 2000	.402775
September 6, 2000	.394880
September 7, 2000	.396604
September 8, 2000	.393155
September 9, 2000	.393155
September 10, 2000	.393155
September 11, 2000	.391340
September 12, 2000	.390069
September 13, 2000	.392066
September 14, 2000	.391022
September 15, 2000	.388980
September 16, 2000	.388980

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

September 17, 2000	.388980
September 18, 2000	.386757
September 19, 2000	.386348
September 20, 2000	.383989
September 21, 2000	.388345
September 22, 2000	.399009
September 23, 2000	.399009
September 24, 2000	.399009
September 25, 2000	.396513
September 26, 2000	.400007
September 27, 2000	.399553
September 28, 2000	.400506
September 29, 2000	.401006
September 30, 2000	.401006

Portugal Escudo:

September 1, 2000	$0.004486
September 2, 2000	.004486
September 3, 2000	.004486
September 4, 2000	.004486
September 5, 2000	.004427
September 6, 2000	.004341
September 7, 2000	.004359
September 8, 2000	.004322
September 9, 2000	.004322
September 10, 2000	.004322
September 11, 2000	.004302
September 12, 2000	.004288
September 13, 2000	.004310
September 14, 2000	.004298
September 15, 2000	.004276
September 16, 2000	.004276
September 17, 2000	.004276
September 18, 2000	.004251
September 19, 2000	.004247
September 20, 2000	.004221
September 21, 2000	.004269
September 22, 2000	.004386
September 23, 2000	.004386
September 24, 2000	.004386
September 25, 2000	.004358
September 26, 2000	.004397
September 27, 2000	.004392
September 28, 2000	.004402
September 29, 2000	.004408
September 30, 2000	.004408

South Korea Won:

September 1, 2000	$0.000904
September 2, 2000	.000904
September 3, 2000	.000904
September 4, 2000	.000904

September 5, 2000	.000905
September 6, 2000	.000903
September 7, 2000	.000900
September 8, 2000	.000901
September 9, 2000	.000901
September 10, 2000	.000901
September 11, 2000	.000901
September 12, 2000	.000901
September 13, 2000	.000901
September 14, 2000	.000897
September 15, 2000	.000893
September 16, 2000	.000893
September 17, 2000	.000893
September 18, 2000	.000877
September 19, 2000	.000887
September 20, 2000	.000887
September 21, 2000	.000887
September 22, 2000	.000881
September 23, 2000	.000881
September 24, 2000	.000881
September 25, 2000	.000888
September 26, 2000	.000893
September 27, 2000	.000898
September 28, 2000	.000896
September 29, 2000	.000897
September 30, 2000	.000897

Spain Peseta:

September 1, 2000	$0.005405
September 2, 2000	.005405
September 3, 2000	.005405
September 4, 2000	.005405
September 5, 2000	.005335
September 6, 2000	.005230
September 7, 2000	.005253
September 8, 2000	.005207
September 9, 2000	.005207
September 10, 2000	.005207
September 11, 2000	.005183
September 12, 2000	.005166
September 13, 2000	.005193
September 14, 2000	.005179
September 15, 2000	.005152
September 16, 2000	.005152
September 17, 2000	.005152
September 18, 2000	.005122
September 19, 2000	.005117
September 20, 2000	.005086
September 21, 2000	.005143
September 22, 2000	.005285
September 23, 2000	.005285
September 24, 2000	.005285
September 25, 2000	.005252
September 26, 2000	.005298
September 27, 2000	.005292

September 28, 2000	.005305
September 29, 2000	.005311
September 30, 2000	.005311

Taiwan N.T. Dollar:

September 1, 2000	$0.032154
September 2, 2000	.032154
September 3, 2000	.032154
September 4, 2000	.032154
September 5, 2000	.032175
September 6, 2000	.032154
September 7, 2000	.032154
September 8, 2000	.032154
September 9, 2000	.032154
September 10, 2000	.032154
September 11, 2000	.032154
September 12, 2000	.032144
September 13, 2000	.032134
September 14, 2000	.032123
September 15, 2000	.032082
September 16, 2000	.032082
September 17, 2000	.032082
September 18, 2000	.031959
September 19, 2000	.031969
September 20, 2000	.031959
September 21, 2000	.031969
September 22, 2000	.032041
September 23, 2000	.032041
September 24, 2000	.032041
September 25, 2000	.031959
September 26, 2000	.031969
September 27, 2000	.031959
September 28, 2000	.031959
September 29, 2000	.031924
September 30, 2000	.031924

RICHARD B. LAMAN,
Chief,
Customs Information Exchange

(T.D. 00–72)

FOREIGN CURRENCIES

VARIANCES FROM QUARTERLY RATE FOR SEPTEMBER, 2000

The following rates of exchange are based upon rates certified to the Secretary of the Treasury by the Federal Reserve Bank of New York, pursuant to 31 U.S.C. 5151, and reflect variances of 5 per centum or more from the quarterly rate published in Treasury Decision *** for the following countries. Therefore, as to entries covering merchandise exported on the dates listed, whenever it is necessary for Customs purposes to convert such currency into currency of the United States, conversion shall be at the following rates:

Holiday(s): September 4, 2000.

Australia dollar:	
September 6, 2000	$0.565500
September 7, 2000	.557900
September 8, 2000	.555700
September 9, 2000	.555700
September 10, 2000	.555700
September 11, 2000	.559000
September 12, 2000	.558600
September 13, 2000	.555000
September 14, 2000	.549000
September 15, 2000	.545000
September 16, 2000	.545000
September 17, 2000	.545000
September 18, 2000	.541700
September 19, 2000	.542000
September 20, 2000	.537200
September 21, 2000	.542800
September 22, 2000	.545500
September 23, 2000	.545500
September 24, 2000	.545500
September 25, 2000	.549000
September 26, 2000	.550600
September 27, 2000	.551000
September 28, 2000	.549000
September 29, 2000	.541500
September 30, 2000	.541500
Denmark Krone:	
September 1, 2000	$0.120584
September 2, 2000	.120584
September 3, 2000	.120584
September 4, 2000	.120584
September 5, 2000	.118906
September 6, 2000	.116659
September 7, 2000	.117268
September 8, 2000	.116131
September 9, 2000	.116131
September 10, 2000	.116131

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

September 11, 2000	.115647
September 12, 2000	.115115
September 13, 2000	.115761
September 14, 2000	.115400
September 15, 2000	.114850
September 16, 2000	.114850
September 17, 2000	.114850
September 18, 2000	.114129
September 19, 2000	.114032
September 20, 2000	.113314
September 21, 2000	.114607
September 22, 2000	.117820
September 23, 2000	.117820
September 24, 2000	.117820
September 25, 2000	.117069
September 26, 2000	.118195
September 27, 2000	.118106
September 28, 2000	.118266
September 29, 2000	.118413
September 30, 2000	.118413

New Zealand dollar:

September 1, 2000	$0.428300
September 2, 2000	.428300
September 3, 2000	.428300
September 4, 2000	.428300
September 5, 2000	.426200
September 6, 2000	.425000
September 7, 2000	.417200
September 8, 2000	.418600
September 9, 2000	.418600
September 10, 2000	.418600
September 11, 2000	.429000
September 12, 2000	.426200
September 13, 2000	.422000
September 14, 2000	.423100
September 15, 2000	.418000
September 16, 2000	.418000
September 17, 2000	.418000
September 18, 2000	.411200
September 19, 2000	.413000
September 20, 2000	.404700
September 21, 2000	.406000
September 22, 2000	.411500
September 23, 2000	.411500
September 24, 2000	.411500
September 25, 2000	.411100
September 26, 2000	.414200
September 27, 2000	.414700
September 28, 2000	.414000
September 29, 2000	.407500
September 30, 2000	.407500

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

Norway krone:	
September 1, 2000	$0.110978
September 2, 2000	.110978
September 3, 2000	.110978
September 4, 2000	.110978
September 5, 2000	.110072
September 6, 2000	.108413
September 7, 2000	.108873
September 8, 2000	.108061
September 9, 2000	.108061
September 10, 2000	.108061
September 11, 2000	.107423
September 12, 2000	.107170
September 13, 2000	.107523
September 14, 2000	.107239
September 15, 2000	.107078
September 16, 2000	.107078
September 17, 2000	.107078
September 18, 2000	.106542
September 19, 2000	.106519
September 20, 2000	.106045
September 21, 2000	.106838
September 22, 2000	.109409
September 23, 2000	.109409
September 24, 2000	.109409
September 25, 2000	.108921
September 26, 2000	.109529
September 27, 2000	.109409
September 28, 2000	.110248
September 29, 2000	.110223
September 30, 2000	.110223
South Africa rand:	
September 15, 2000	$0.139402
September 16, 2000	.139402
September 17, 2000	.139402
September 18, 2000	.137363
September 19, 2000	.137174
September 20, 2000	.136333
September 21, 2000	.136705
September 22, 2000	.137931
September 23, 2000	.137931
September 24, 2000	.137931
September 25, 2000	.138141
September 26, 2000	.138793
September 27, 2000	.137836
September 28, 2000	.137589
September 29, 2000	.138523
September 30, 2000	.138523
Sweden krona:	
September 1, 2000	$0.107089
September 2, 2000	.107089
September 3, 2000	.107089

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

September 4, 2000	.107089
September 5, 2000	.105569
September 6, 2000	.103546
September 7, 2000	.104603
September 8, 2000	.103611
September 9, 2000	.103611
September 10, 2000	.103611
September 11, 2000	.102764
September 12, 2000	.102396
September 13, 2000	.102859
September 14, 2000	.102512
September 15, 2000	.102082
September 16, 2000	.102082
September 17, 2000	.102082
September 18, 2000	.101740
September 19, 2000	.101549
September 20, 2000	.101266
September 21, 2000	.101885
September 22, 2000	.103896
September 23, 2000	.103896
September 24, 2000	.103896
September 25, 2000	.103455
September 26, 2000	.103918
September 27, 2000	.103530
September 28, 2000	.103215
September 29, 2000	.103864
September 30, 2000	.103864

Switzerland franc:

September 1, 2000	$0.580383
September 2, 2000	.580383
September 3, 2000	.580383
September 4, 2000	.580383
September 5, 2000	.571821
September 6, 2000	.562430
September 7, 2000	.564334
September 8, 2000	.559628
September 9, 2000	.559628
September 10, 2000	.559628
September 11, 2000	.564493
September 12, 2000	.564653
September 13, 2000	.567054
September 14, 2000	.563825
September 15, 2000	.561640
September 16, 2000	.561640
September 17, 2000	.561640
September 18, 2000	.559597
September 19, 2000	.562905
September 20, 2000	.560381
September 21, 2000	.564493
September 22, 2000	.578202
September 23, 2000	.578202
September 24, 2000	.578202
September 25, 2000	.575043

Foreign Currencies—Variances from quarterly rates for September 2000 (continued):

September 26, 2000	.578737
September 27, 2000	.577201
September 28, 2000	.578436
September 29, 2000	.579206
September 30, 2000	.579206

Thailand baht:

September 6, 2000	$0.024155
September 7, 2000	.024143
September 8, 2000	.024033
September 9, 2000	.024033
September 10, 2000	.024033
September 11, 2000	.024114
September 12, 2000	.024033
September 13, 2000	.023918
September 14, 2000	.023923
September 15, 2000	.023815
September 16, 2000	.023815
September 17, 2000	.023815
September 18, 2000	.023585
September 19, 2000	.023629
September 20, 2000	.023452
September 21, 2000	.023458
September 22, 2000	.023364
September 23, 2000	.023364
September 24, 2000	.023364
September 25, 2000	.023419
September 26, 2000	.023680
September 27, 2000	.023691
September 28, 2000	.023529
September 29, 2000	.023725
September 30, 2000	.023725

United Kingdom pound sterling:

September 8, 2000	$1.419600
September 9, 2000	.419600
September 10, 2000	.419600
September 11, 2000	.412300
September 12, 2000	.402000
September 13, 2000	.412500
September 14, 2000	.406000
September 15, 2000	.400500
September 16, 2000	.400500
September 17, 2000	.400500
September 18, 2000	.401500
September 19, 2000	.408000
September 20, 2000	.410700
September 21, 2000	.428000

RICHARD B. LAMAN
Chief,
Customs Information Exchange

GENERAL NOTICE

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(No. 9 2000)

AGENCY: U.S. Customs Service, Department of the Treasury

SUMMARY: The copyrights, trademarks, and trade names recorded with the U.S. Customs Service during the month of August 2000. The last notice was published in the CUSTOMS BULLETIN on June 7, 2000.

Corrections or information to update files may be sent to U.S. Customs Service, IPR Branch, 1300 Pennsylvania Avenue, N.W., Ronald Reagan Building -3rd floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Joanne Roman Stump, Chief, Intellectual Property Rights Branch, (202) 927-2330.

Dated:

JOSEPH E. HOWARD
(for Joanne Roman Stump, Chief, Intellectual Property Rights Branch)

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COP0000149	20000823	20200823	39/1053 FROG PORCUPINE BALLS	ORIENTAL TRADING COMPANY INC.	N
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TMK0000407	20000810	20100523	KING'S KIM CHEE	U-JIN ENTERPRISES INCORPORATED	N
TMK0000408	20000810	20051025	FUJI	FUJI PHOTO FILM CO., LTD.	N
TMK0000409	20000810	20020418	FUJICOLOR	FUJI PHOTO FILM CO., LTD.	N
TMK0000410	20000810	20080705	GRANDEX	FUJI PHOTO FILM CO., LTD.	N
TMK0000411	20000810	20090216	QUCKSNAP	FUJI PHOTO FILM CO., LTD.	N
TMK0000412	20000810	20070929	FUJI	FUJI PHOTO FILM CO., LTD.	N
TMK0000413	20000810	20010825	FUJI	FUJI PHOTO FILM CO., LTD.	N
TMK0000414	20000810	20080112	QUICKSNAP	FUJI PHOTO FILM CO., LTD.	N
TMK0000415	20000810	20070929	FUJI	FUJI PHOTO FILM CO., LTD.	N
TMK0000416	20000811	20090615	SCRUBBY BUDDIES	BATH & BODY WORKS, INC.	N
TMK0000417	20000811	20100228	FRUIT-LITE	BATH & BODY WORKS, INC.	N
TMK0000418	20000811	20060730	JELLY JAR SCENTS	BATH & BODY WORKS, INC.	N
TMK0000419	20000811	20091012	BEAUTIFUL BY NATURE	BATH & BODY WORKS, INC.	N
TMK0000420	20000811	20100201	PEARBERRY & DESIGN	BATH & BODY WORKS, INC.	N
TMK0000421	20000811	20080602	PURELY FRESH	BATH & BODY WORKS, INC.	N
TMK0000422	20000811	20080929	TRANQUIL SLEEP	BATH & BODY WORKS, INC.	N

REC NUMBER	EFF DT	EXPT DT	NAME OF COP, TMK, TNM OR MSK	OWNER NAME	RES
TMK0000423	20000811	20090608	WHITE BARN CANDLE COMPANY	WB CANDLECO, INC.	N
TMK0000424	20000811	20100130	MODA INT'L	VICTORIA SECRET CATALOGUE LLC.	N
TMK0000425	20000815	20100620	CALLAWAY	CALLAWAY GOLF COMPANY	N
TMK0000426	20000815	20100613	CALLAWAY GOLF	CALLAWAY GOLF COMPANY	N
TMK0000427	20000815	20090511	SPLASH-CAM	OCEAN CABLES INC.	Y
TMK0000428	20000815	20021130	"THE CROAKETTES"	P. A. HUBBELL INC.	N
TMK0000429	20000816	20090824	SWINGIN' MEDALLIONS	MEDALLION STUDIOS INC.	N
TMK0000430	20000822	20090404	HEN & ROOSTER	JAMES A. FROST	N
TMK0000431	20000828	20050528	GIANFRANCO FERRE'	GIANFRANCO FERRE S.P.A.	N
TMK0000432	20000828	20021110	GIANFRANCO FERRE (STYLIZED LETTERING)	GIANFRANCO FERRE S.P.A.	N
TMK0000433	20000828	20040514	GINFRANCO FERRE'	GIANFRANCO FERRE S.P.A.	N
TMK0000434	20000829	20080802	I.N.C. INTERNATIONAL CONCEPTS	FEDERATED BRANDS, INC.	N
TMK0000435	20000829	20050829	I.N.C. INTERNATIONAL CONCEPTS	FEDERATED BRANDS, INC.	N
TMK0000436	20000829	20050829	I.N.C. INTERNATIONAL CONCEPTS	FEDERATED BRANDS, INC.	N

SUBTOTAL RECORDATION TYPE 35

TOTAL RECORDATIONS ADDED THIS MONTH 58

Department of the Treasury

United States Customs Service

ANNOUNCEMENT OF A NATIONAL CUSTOMS AUTOMATION PROGRAM TEST REGARDING SUBMISSION TO CUSTOMS OF ELECTRONIC AIR CARGO MANIFEST INFORMATION

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice announces Customs plan to conduct a prototype test program under the National Customs Automation Program that will permit qualified air carriers to submit electronic air cargo manifest information to Customs prior to arrival of the aircraft in the United States, and will eliminate the requirement that a Customs Form 7509 (Air Cargo Manifest) be submitted upon arrival. Electronic filing of air cargo manifest information will permit Customs to electronically review the data prior to arrival of the carrier in the U.S, facilitate cargo control and processing, and provide for the electronic release of cargo. This notice solicits public participation in the test program in accordance with the eligibility and procedural requirements set forth in this document, and invites comments concerning any aspect of the planned test.

EFFECTIVE DATES: The test will commence no sooner than January 2, 2001. Comments concerning the eligibility standards, selection criteria, procedural requirements, or information submission requirements must be received on or before [insert date 30 days from the date of publication of this notice in the **Federal Register**].

ADDRESSES: Written comments (preferably in triplicate) may be submitted to and inspected at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, 1300 Pennsylvania Avenue, N.W., 3rd Floor, Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: For operational or policy matters: Sandra Hasegawa, Program Officer, (202) 927-0983; John Considine, Chief, Manifest & Conveyance, (202) 927-0042. For systems or automation matters: Assigned Client Representative or Michael Mohr, Client Representative, (703) 921-7072. For legal matters: Larry L. Burton, Attorney Advisor (202) 927-1287.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title VI of the North American Free Trade Agreement Implementation Act (the Act), Public Law 103-182, 107 Stat. 2057 (December 8, 1993), contains provisions pertaining to Customs Modernization (107 Stat. 2170). Subtitle B of title VI establishes the National Customs Automation Program (NCAP), an automated and electronic system for the processing of commercial importations. Section 631 of the Act creates sections 411 through 414 of the Tariff Act of 1930 (19 USC 1411 through 1414), which define and list the existing and planned components of the NCAP (section 411), establish program goals (section 412), provide for the implementation and evaluation of the program (section 413), and provide for the remote location filing of entries (section 414). Requirements for conducting an approved test program or procedure designed to evaluate planned components of the NCAP are set forth in § 101.9 of the Customs Regulations (19 CFR 101.9).

I. Description of Test Program.

AIR CARGO MANIFEST

Section 122.42(c) of the Customs Regulations (19 CFR 122.42(c)), requires that the aircraft commander of an aircraft arriving in the United States from a foreign area, or his agent, must deliver upon arrival any required forms to the Customs officer at the place of entry. Section 122.48 of the Customs Regulations (19 CFR 122.48) provides that an air cargo manifest is required for all cargo on board a flight arriving in the United States from a foreign area, except for cargo arriving from and departing for a foreign country on the same through flight. Section 122.48(c) provides that the air cargo manifest must be on the Customs Form (CF) 7509.

ELECTRONIC SUBMISSION OF AIR CARGO MANIFEST INFORMATION

In an attempt to facilitate cargo processing and release, for the past several years Customs has accepted electronic air cargo manifest information from importing carriers. In such circumstances, however, submission of the paper CF 7509 was still required upon the carrier's arrival in the United States, even though an electronic submission of manifest data had already been submitted to Customs.

In a more comprehensive attempt to facilitate the control, processing and release of air cargo, Customs will permit, via this test program, participating Air Automated Manifest System (AAMS) air carriers who meet the electronic and procedural requirements set forth in this document to electronically file air cargo manifest information with Customs prior to the aircraft's arrival in the United States and will eliminate the requirement that a CF 7509 be submitted. For the duration of this test period, §122.48(c) will be suspended for test program participants.

It is anticipated that the test program will run for approximately

one year. In the event, however, that Customs determines that a longer test program period is required, the test program will continue to run, uninterrupted, until it is concluded by notice in the **Federal Register.**

CUSTOMS OBJECTIVES

Customs objectives in conducting this test program are:

1. To work with the trade community, government agencies, and other parties impacted by this program in the implementation and evaluation of the test program; and,

2. To gain experience from the test program relating to the design of automated systems, the development of operational procedures that facilitate cargo release (*i.e.*, communication, cargo movement), and whether participants can meet the test program requirements of transmitting timely, complete and accurate manifest data.

REGULATORY PROVISION SUSPENDED

As noted above, § 122.48(c), pertaining to the presentation of an air cargo manifest on the CF 7509, will be suspended during this test. Participants generally will not be required to submit a CF 7509 to Customs or have a copy on board the aircraft, but must be able to provide Customs with required information electronically or otherwise on demand. Participation in this test program does not preclude compliance with the applicable requirements of other government agencies as they relate to cargo manifest information. A CF 7507 General Declaration is still required and must be presented to Customs upon arrival at the port of entry. The CF 7507 is also required for flights proceeding in-land on a permit-to-proceed.

II. Test Program Eligibility Criteria

To be eligible for participation in the test program, an air carrier must demonstrate the following:

1. A carrier must be a qualified AAMS carrier. A qualified AAMS carrier has been tested and certified by Customs to possess the technical capability to transmit and receive all types of AAMS data. Technical requirements for AAMS carriers are set forth in the Customs publication entitled "Customs Automated Manifest Interface Requirements – Air" (CAMIR). Those carriers that are not currently AAMS qualified, and wish to be, should submit a written request to become an AAMS participant to the Customs Client Representative Branch closest to the applicant's operational location. A list of Customs Client Representative offices may be obtained from United States Customs Service, Office of Information and Technology, Client Representative Branch, 7501 Boston Boulevard, Springfield, VA 22153, (703) 921-7500;

2. A qualified AAMS carrier must have completed a period of dual mode testing at a designated AAMS-automated Customs port. Dual mode testing requires that a carrier submit both a CF 7509 and an

electronic transmission of air cargo manifest data to the designated AAMS-automated Customs port for a specified period of time. A carrier is required to participate in dual-mode testing at a designated AAMS-automated Customs port for a period generally not to exceed 45 days, although the time may be extended at the discretion of the port director; and

3. A carrier must possess the ability to electronically transmit to Customs complete air cargo manifest information, and any other required information, for all their flights arriving at the designated AAMS-automated Customs port, including in-bond cargo imported by a non-automated air carrier.

III. Test Program Application and Selection Process

APPLICATION PROCESS

An air carrier that satisfies the eligibility criteria set forth in this document may apply to be a participant in this test program. Customs will accept applications from eligible air carriers for the duration of the test program. A written request to be considered for participation in the test program should be sent to the air carrier's designated Customs Client Representative (see above). The request must designate the AAMS-automated Customs port(s) to which the electronic air cargo manifest information will be transmitted, indicate the means by which the electronic transmissions will be sent (i.e. direct line, Service Center, etc.), designate a point of contact and telephone number within the applicant's organization, and be signed by an authorized official. Upon review of the application, Customs will notify the applicant in writing as to whether the request to be a test program participant has been approved or denied. If denied, Customs will issue written notice to the applicant that sets forth the basis for the denial and informs the applicant of the right to reapply after any deficiencies identified in the notice of denial have been corrected.

PARTICIPANT SELECTION

Any importing air carrier that applies for permission to participate in the test program, and meets the eligibility requirements described above, will be given due consideration by Customs. Selection will be based on the extent of an applicant's electronic interface capabilities and the ability to meet the technical user requirements identified in the CAMIR as well as the requirements set forth in this notice.

Participation in this test program will not be considered confidential information, and the identity of participants will be made available to the public upon written request.

IV. Test Program Procedures

Program procedures will be closely coordinated with all participating and affected parties. The following procedures apply to all participant air carriers and will be in effect for the duration of the test program:

1. All carriers must transmit full air cargo manifest data to AAMS at least one (1) hour prior to aircraft arrival. If this condition cannot be met, a paper manifest must be made available before cargo may be moved.

2. Copies of air waybills must be presented to Customs, on demand, for enforcement purposes.

3. All carriers must transmit specified quantities for cargo at the lowest deliverable level.

4. Full manifest data must be submitted to Customs by all air carriers and is to include all house air waybill information, including shipper/consignee information, and complete address data as shown on the paper air waybill.

5. Consolidations with only one house air waybill must be transmitted as a master air waybill along with a house air waybill. The carrier may not elect to send this information in as a simple air waybill for expediency purposes.

6. House air waybill numbers must be accurate. If an alpha prefix appears on the house air waybill as part of the air waybill number, this information must be included in the electronic transmission. The carrier may not elect to eliminate the alpha prefix from house air waybills when sending the electronic information.

7. If cargo is being transferred to an automated deconsolidator, the carrier may nominate the deconsolidator to complete the manifest information. If the cargo is being transferred to a non-automated deconsolidator, the carrier will be held responsible for the transmission of full house air waybill information.

8. Carriers must have electronic authorization from Customs to release cargo. If systemic problems preclude an electronic authorization for release, a paper request for release is required. A signed Customs Form 3461 alone will not be an authorization for release for the purposes of this test program.

9. Cargo may not be transferred without an authorization for transfer from Customs via the electronic system. Blanket permits to transfer will not be allowed during the test period for test participants.

10. If for any reason the electronic system becomes inoperative or Customs is unable to receive electronic manifest information, parties will be required to submit a paper air cargo manifest on Customs Form 7509 or any other Headquarters pre-approved document. If for any reason the Air Automated Manifest System, Cargo Selectivity, or other entry related automated system is inoperative and electronic cargo release and selectivity is not possible, a Customs port director, after a 2 hour waiting period, will implement procedures to allow for the non-electronic release of cargo until such time as electronic systems are again operative. The port director will ensure that any of the appropriate information on entries released under these manual procedures is properly entered into the electronic system as soon as possible.

V. Suspension from the Test Program and Administrative Review

SUSPENSION, PENALTIES AND LIQUIDATED DAMAGES

A test program participant's failure to comply with any of the procedural requirements or operational standards set forth in this document, or failure to adhere to all applicable laws and regulations, may result in the temporary or permanent suspension of the air carrier from the test program, and may subject the air carrier to penalties, liquidated damages, or other administrative sanctions.

WRITTEN NOTICE

Except in instances of willfulness on the part of the test program participant, or where public health, interest or safety is at issue, the port director at the designated AAMS-automated Customs port will issue a written notice of proposed suspension to the test program participant. The notice will inform the air carrier of the following:

1. The basis for the proposed action and all applicable terms and conditions;

2. The right to seek administrative review of the action, pursuant to the terms set forth in this document;

3. That any action will be held in abeyance for a period of 10 calendar days from the date of the notice or, if the test program participant timely seeks administrative review of the matter pursuant to the terms set forth in this document, pending conclusion of Customs review of the matter at the port level; and

4. That failure to seek administrative review of this matter pursuant to the terms set forth in this document will constitute acceptance of the terms and conditions set forth in the notice, will preclude any further administrative review of the matter, and the proposed suspension will automatically go into effect at midnight of the 10th calendar day from the date of the notice.

Where there is willfulness on the part of the test program participant, or where public health, interest or safety is concerned, suspension from the test program may go into effect immediately upon the issuance, by the port director to the test program participant, of an electronic notice setting forth the basis for the immediate suspension and any other related information. Within 5 calendar days from the date the electronic notice was issued, Customs will issue a written notice of immediate suspension to the test program participant. A notice of immediate action, whether in an electronic or paper format, will provide the same type of information as contained in a notice of proposed suspension. An immediate suspension will remain in effect pending conclusion of any administrative review of the action by Customs.

ADMINISTRATIVE REVIEW

To seek administrative review of a suspension from the test program, the air carrier must submit documentation to the port director

of the Customs port that issued the suspension notice within 10 calendar days from the date the notice of proposed suspension or the electronic notice of immediate suspension was issued. The documentation must establish, to the satisfaction of Customs, that the alleged deficiencies which led to the action did not occur or have been corrected.

The port director will review the documentation and issue a written final notice to the test program participant within 30 calendar days from the date the documentation was received by Customs, unless this time period is extended upon due notice. The final notice will either impose a suspension, effective upon the date of the final notice, or provide notice that no suspension will be imposed.

In the case of an air carrier seeking administrative review of an immediate suspension, the same documentation requirements set forth above apply. The port director will review the documentation and issue a written final notice to the test program participant within 30 calendar days from the date the documentation was received by Customs, unless this time period is extended upon due notice. The final notice will inform the test program participant that either the suspension has been affirmed, or modified in its terms and conditions, or the suspension has been revoked, effective upon the date of the final notice.

If a suspension is imposed, the suspended test program participant may seek a second level of administrative review and appeal the final notice of suspension by submitting documentation to the Assistant Commissioner, Office of Field Operations, within 10 calendar days from the date of the final notice.

The Assistant Commissioner, Office of Field Operations, or his designee, will issue to the suspended test program participant a written decision within 30 calendar days from the date the documentation was received, unless this time period is extended upon due notice. The decision will affirm, modify, or revoke the final notice of suspension and will set forth the basis for the determination, as well as all other applicable terms and conditions.

VI. Test Evaluation Criteria

Once participants are selected, Customs and the participants will meet publicly or in an electronic forum to review the comments received concerning the methodology of the test program or procedures, complete procedures in light of those comments, form problem-solving teams, and establish baseline measures and evaluation methods and criteria. Evaluations of the test program will be conducted and the final results will be published in the Federal Register and Customs Bulletin, as required by section 101.9(b), Customs Regulations.

The following evaluation methods and criteria have been suggested:

1. Establish baseline measurements through questionnaires to the trade and Customs personnel; and

2. Analyze statistical data obtained through the AAMS.

Preliminary evaluation criteria for Customs and other government

agencies include workload impact (workload shifts, cycle time, etc.), policy and procedural accommodation, and trade compliance impact. Possible criteria for the trade participants include cost benefits and operational efficiency.

Dated: September 27, 2000

BONNI G. TISCHLER
Assistant Commissioner,
Office of Field Operations

[Published in the **Federal Register**, October 2, 2000 (65 FR 58840)]

UNITED STATES CUSTOMS SERVICE

September 27, 2000

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the Customs Bulletin.

STUART P. SEIDEL

Assistant Commissioner
Office of Regulations and Rulings

U.S. CUSTOMS SERVICE

GENERAL NOTICE

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF A PLASTIC ELECTRICAL CONNECTOR

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of classification ruling letter and treatment relating to the classification of a plastic electrical connector.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of plastic electrical connectors and any treatment previously accorded by the Customs Service to substantially identical transactions. Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before [30 days from the date of publication of notice in the *Customs Bulletin*].

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: General Classification Branch, 1300 Pennsylvania Avenue. N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Peter T. Lynch, General Classification Branch, 202-927-1396.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L.

103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of plastic electrical connectors. Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NY) B82385, issued March 7, 1997, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing data bases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise the Customs Service during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise the Customs Service of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or their agents for importations of merchandise subsequent to this notice.

In NY B82385, dated March 7, 1997, the classification of a product

commonly referred to as a plastic electrical connector was determined to be in subheading 8547.20.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for insulating fittings of plastics. This ruling letter is set forth in "Attachment A" to this document. Since the issuance of that ruling, Customs has had a chance to review the classification of this merchandise and has determined that the classification is in error. The correct classification for the article is in subheading 8538.90.60, HTSUS, which provides for parts for electrical connectors

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY B82385, and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 962145 (*see* "Attachment B" to this document) . Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 22, 2000

MARVIN AMERNICK,
(for John Durant, Director)
Commercial Rulings Division

[ATTACHMENTS]

[ATTACHMENT A]

NY B82385
March 7, 1997
CLA-2-85:RR:NC:1: 112 B82385
CATEGORY: Classification
TARIFF NO.: 8547.20.0000

MR. MARTIN ZIMA
KINTETSU WORLD EXPRESS (U.S.A.), INC.
2571 Busse Road
Elk Grove Village, IL 60007

Re: The tariff classification of a plastic connector housing. The country of origin is not stated.

DEAR MR. ZIMA:

In your letter dated February 6, 1997, on behalf of JST Corporation, you requested a tariff classification ruling.

As indicated by the submitted sample, the plastic connector housing is the outer covering for the electrical elements, which are the principal components of the connector. This housing also serves a more important insulating function in that the plastic prevents unwanted contact between certain electrical wires and specific

elements.

The applicable subheading for the plastic connector housing will be 8547.20.0000, Harmonized Tariff Schedule of the United States (HTS), which provides for insulating fittings of plastics. The general rate of duty will be 1.5 percent ad valorem.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist David Curran at 212-466-5680.

ROBERT SWIERUPSKI,
Chief, Machinery Branch
National Commodity
Specialist Division

[ATTACHMENT B]

HQ 962145
CLA-2 RR:CR:GC 962145ptl
CATEGORY: Classification
TARIFF NO.: 8538.90.60

MR. MARTIN ZIMA
KINTETSU WORLD EXPRESS (U.S.A.), INC.
2571 Busse Road
Elk Grove Village, IL 60007

Re: Plastic electrical connector housing; NY B82385 revoked.

DEAR MR. ZIMA:

In NY B82385, issued to you on March 7, 1997, by the Director of Customs National Commodity Specialist Division, in New York, on behalf of JST Corporation, an article referred to as a plastic electrical connector housing was classified in subheading 8547.20.00, Harmonized Tariff Schedule of the United States (HTSUS), which provides for insulating fittings of plastics. We have reconsidered that ruling and determined that that classification is incorrect. Pursuant to the analysis set forth below, the correct classification for the article is subheading 8538.90.60, HTSUS, which provides for parts for electrical connectors.

FACTS:

The plastic connector housing classified in NY B82385 is a small (¾" x ½" x ¼") rectangular box. The interior is evenly divided along its length into five separate compartments each with a large opening at one end, a small opening at the other and an additional opening along its "top." The "bottom" of the connector has been made so that it forms a "clip" which can be used to attach the connector to some external surface. In your ruling request of February 6, 1997, you state the article protects the wiring and connector elements from overheating and short circuiting by protecting the wiring elements from heat and contact with other electrically active wires. The connector is made from 100 % molded plastic and is said to have uses ranging from automotive to light and heavy machinery.

ISSUE:

What is the classification of a plastic electrical connector housing?

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). The systematic detail of the HTSUS is such that virtually all goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied in order.

In understanding the language of the HTSUS, the Harmonized Commodity Description and Coding System Explanatory Notes may be utilized. The Explanatory Notes (ENs), although not dispositive or legally binding, provide a commentary on the scope of each heading of the HTSUS, and are generally indicative of the proper interpretation of these headings. *See* T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

8538.00	Parts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537:	
	* * *	
8538.90	Other:	
	* * *	
8538.90.60		Molded parts

8547	Insulating fittings for electrical machines, appliances or equipment, being fittings wholly of insulating material apart from any minor components of metal (for example, threaded sockets) incorporated during molding solely for the purposes of assembly, other than insulators of heading 8546; electrical conduit tubing and joints therefor, of base metal lined with insulating material:	
	* * *	
8547.20.00		Insulating fittings of plastics

In NY B82385, Customs classified the article in heading 8547, HTSUS, on the basis of EN 85.47(A) which provides, in pertinent part, as follows:

> " With the exception of insulators as such (heading 85.46), this group covers all fittings for electrical machinery, appliances or apparatus, provided:
>
> (i) They are wholly of insulating material, or are wholly of insulating material (e.g., plastics) apart from any minor components of metal (screws, threaded sockets, sleeves, etc.) incorporated during moulding solely for purposes of assembly.
>
> and (ii) They are designed for insulating purposes even though at the same time they have other functions (e.g., protection)."

Customs has reviewed the relevant ENs and the subject article and has determined that while the article is wholly made of an insulating material (plastic), it does not possess the characteristics normally associated with insulating fittings or other articles described in the EN. The molded plastic article being classified is designed to function as a part for a electrical connector housing and not as an insulating fitting or insulator.

Accordingly, because the article is a part of an electrical connector and is not an insulating fitting, it falls within the scope of EN 85.38 and is classified in subheading

8538.90.60, HTSUS.

HOLDING:

Plastic electrical connector housings are classified in subheading 8538.90.60, HTSUS, which provides for [p]arts suitable for use solely or principally with the apparatus of heading 8535, 8536 or 8537: [o]ther: [o]ther: [m]olded parts.

NY B82385, dated March 7, 1997, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division

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19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT

RELATING TO TARIFF CLASSIFICATION OF DRILL/SAW COMBINATION KIT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of a drill/circular saw combination kit.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a drill/circular saw combination kit under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before [30 days from the date of publication in the Customs Bulletin.]

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a drill/saw combination kit. Although in this notice Customs is specifically referring to Port Director ruling (PD) E81194, dated May 7, 1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importation of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An

importer's failure to advise Customs of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importation of merchandise subsequent to this notice.

In PD E81194, Customs ruled that a battery powered drill/saw combination kit was classified according to its components. The drill was classified in subheading 8508.10.00, HTSUS. The circular saw was classified in subheading 8508.20.00, HTSUS. The nickel cadmium batteries were classified in subheading 8507.30.80 HTSUS. The battery charger was classified in subheading 8504.40.95, HTSUS. The flashlight was classified in subheading 8513.10.20 HTSUS. The plastic carrying case was classified with the other articles under GRI 5(a), HTSUS. PD E81194 is set forth as Attachment "A".

It is now Customs position that this product is correctly classified as a set put up for retail sale in subheading 8505.20.00, HTSUS, which provides for "electromechanical tools for working in the hand with self-contained electric motor: saws". We not that the kit contains the same items as a kit classified as a set in NY F81504, dated February 7, 2000, except for the addition of a flashlight. That kit was classified according to GRI 3(c) under subheading 8508.20.00, HTSUS. Customs now believes that a flashlight included in the kit may be used in conjunction with the other articles "to meet a particular need or carry out a specific activity." One might use the saw to cut a piece of wood to specifications and then use the drill to assist in fastening the wood into place in a dark area, such as in a cabinet, closet, attic or basement, thereby necessitating the use of the flashlight to complete the project. The flashlight would also be useful to properly place a drill bit when drilling a hole in a recessed area.

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke PD E81194, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964187 (*see* Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 22, 2000

MARVIN AMERNICK
(For John Durant, Director)
Commercial Rulings Division

[Attachments]

[ATTACHMENT A]

PD E81194
May 7, 1999
CLA-2-85:LA:S:T:1:6:C03 E81194
CATEGORY: Classification
TARIFF NO.: 8508.10.0010, 8508.20.0020, 8507.30.8010, 8504.40.9550, 8513.10.2000.

JONATHAN P. BECK
TOWER GROUP INTERNATIONAL
1099 Winterson Road
Suite 105
Linthicum, MD 21090

Re: The tariff classification of electric hand tools from China.

DEAR MR. BECK:

In your letter dated March 25, 1999 on behalf of Black & Decker Corporation, you requested a tariff classification ruling.

No sample was submitted but, based on your description, the subject item is made up of the following articles:

1 Battery powered drill
1 Battery powered circular saw
2 Nickel cadmium batteries
1 Battery charger
1 Flashlight
1 Plastic fitted carrying case

Although the various articles are packaged together, they do not constitute a set and are classifiable in the specific provisions for such articles in the Harmonized Tariff Schedule of the United States (HTS).

The applicable subheading for the drill will be 8508.10.0010, HTS, which provides for battery powered rotary drills. The rate of duty will be 1.7 percent ad valorem.

The applicable subheading for the circular saw will be 8508.20.0020, HTS, which provides for circular saws. The rate of duty will be free.

The applicable subheading for the nickel cadmium batteries will be 8507.30.8010, HTS, which provides for nickel cadmium batteries. The rate of duty will be 2.5 percent ad valorem.

The applicable subheading for the battery charger will be 8504.40.9550, HTS, which provides for rectifiers and rectifying apparatus, other than power supplies. The rate of duty will be 1.5 percent ad valorem.

The applicable subheading for the flashlight will be 8513.10.2000, HTS, which provides for flashlights. The rate of duty will be 12.5 percent ad valorem.

The plastic carrying case will be classified with the articles as provided for in General Rule of Interpretation 5(a) of the HTS.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported.

IRENE JANKOV,
Port Director
Los Angeles-Long Beach Seaport

[ATTACHMENT B]

HQ 964187
CLA-2 RR:CR:GC 964187AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 8508.20.00

MR. JONATHAN P. BECK
TOWER GROUP INTERNATIONAL
1099 Winterson Road, Ste. #105
Linthicum, MD 21090

Re: PD E81194 revoked; drill/circular saw combination kit

DEAR MR. BECK:

This is in reference to PD E81194, issued to you on May 7, 1999, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a Black & Decker drill/ circular saw combination kit [hereinafter "kit"]. We have reviewed the decision in PD E81194 and have determined that the classification set forth in that ruling for the kit is in error. This ruling revokes PD E81194.

FACTS:

The kit consists of the following articles: 1 battery powered drill, 1 battery powered circular saw, 2 nickel cadmium batteries, 1 battery charger, 1 flashlight, and 1 plastic fitted carrying case. No sample was submitted.

In PD E81194, Customs classified the referenced kit under the specific HTSUS subheading for each component stating that the articles, although packaged together, do not constitute a set under the HTSUS. The drill was classified in subheading 8508.10.00, HTSUS. The circular saw was classified in subheading 8508.20.00, HTSUS. The nickel cadmium batteries were classified in subheading 8507.30.80, HTSUS. The battery charger was classified in subheading 8504.40.95, HTSUS. The flashlight was classified in subheading 8513.10.20, HTSUS. The plastic carrying case was classified with the other articles under GRI 5(a), HTSUS.

ISSUE:

Whether a kit consisting of 1 battery powered drill, 1 battery powered circular saw, 2 nickel cadmium batteries, 1 battery charger, 1 flashlight, and 1 plastic fitted carrying case is classified as a set under the HTSUS?

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and mutatis mutandis, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. See T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

GRI 3(b) provides for the classification of goods put up in sets for retail sale. The rule states, in pertinent part, as follows:

> (b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the

material or component which gives them their essential character, insofar as this criterion is applicable.

Explanatory Note (X) (page 5) to GRI 3(b) states that the term "goods put up in sets for retail sale" means goods which:

(a) consist of at least two different articles which are, prima facie, classifiable in different headings;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking.

GRI 3(c) states: "When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

In the instant case, criteria (a) and (c) of the EN to GRI 3(b) are easily met. The kit consists of products that, if imported separately, are classifiable in the following five different headings:

4202 Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, map cases, cigarette cases, tobacco pouches, tool bags, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:

* * * * * * * * * * * *

8504 Electrical transformers, static converters (for example, rectifiers) and inductors; parts thereof:

* * * * * * * * * * * *

8507 Electric storage batteries, including separators therefor (sic), whether or not rectangular (including square); parts thereof:

* * * * * * * * * * * *

8508 Electromechanical tools for working in the hand with self-contained electric motor; parts thereof:

* * * * * * * * * * * *

8513 Portable electric lamps designed to function by their own source of energy (for example, dry batteries, storage batteries, magnetos), other than lighting equipment of heading 8512; parts thereof:

Accordingly, the plastic carrying case is classifiable in heading 4202, HTSUS. The battery charger is classifiable under heading 8504, HTSUS. The nickel cadmium batteries are classifiable under heading 8507, HTSUS. The drill and circular saw are classifiable under heading 8508, HTSUS. The flashlight is classifiable under heading 8513, HTSUS. All of these articles are put up in the plastic fitted carrying case, a manner suitable for sale directly to users without repacking.

Moving to criteria (b), the second requirement of the EN to GRI 3(b), there appear to be no judicial cases under the HTSUS dealing specifically with the meaning of the language "to meet a particular need or carry out a specific activity". In HQ 953472,

dated March 21, 1994, Customs articulated its position that in order to be classifiable as a set, the individual components must be "used together or in conjunction with another for a single purpose [need] or activity."

Clearly the batteries and battery charger are used in conjunction with the power tools for the single purpose of making the cordless power tools useable. Likewise, the plastic carrying case is designed to carry the items that compose the kit, thus providing the tools to the user in an efficient manner. It is therefore used in conjunction with the tools for the single activity of building or constructing with wood.

Nevertheless, we must determine whether the other articles in the kit are "put up together to meet a particular need or carry out a specific activity." To answer the question of whether a circular saw, a drill and a flashlight would be used in conjunction with one another for a single purpose, we consulted the internet and other sources. We found advertisements for numerous kits containing drills and flashlights, and drills and saws, but few containing all three. We did find kits by other manufacturers containing a cordless circular saw, drill and flashlight. In fact, it is unlikely that a circular saw would be used with a flashlight. In order to use a circular saw safely, one must have a well lit, flat surface that will support the wood being cut. These precautions do not lend themselves to the use of a flashlight. A flashlight may be useful, however, in correctly placing a drill when working in a closet or cabinet, attic, crawlspace, under a deck or in a basement. It is therefore likely that a number of projects would require the use of all three of these items in conjunction with one another. For instance, the saw might be used to cut the wood to specifications in a proper work space and then the drill and flashlight might be necessary to fasten the wood in a poorly lit area by use of the screwdriver head of the drill. The flashlight might also be used to illuminate a recessed area of a piece of wood in order to drill a hole in that area. All of the articles work together to carry out the activity of constructing with wood. Hence, the kit qualifies as a set within the meaning of GRI 3(b).

GRI 3(b) also directs us to consider which articles in the set merit consideration in determining the article that imparts the essential character to the set. The kit is marketed as a drill/circular saw combination kit. It is purchased for the use of the drill and the saw, not the flashlight, batteries, battery charger or plastic carrying case. The other articles in the kit simply assist the user in utilizing the drill and the circular saw and therefore do not merit equal consideration in tariff classification.

GRI 1 instructs us to first consider the headings of each chapter. Here, both the drill and the saw are classified in heading 8508, HTSUS. GRI 6 directs us to classify articles at the subheading level according to the chapter notes and GRIs. The drill, classifiable in subheading 8508.10.00, HTSUS, and the circular saw, classifiable in subheading 8508.20.00, HTSUS, are both important articles in the completion of construction projects. Applying GRI 3(b) at the subheading level, neither the drill nor the saw can be said to impart the essential character to the set over the other. By application of GRI 3(c), the instant set is classified in subheading 8508.20.00, HTSUS, the subheading which occurs last in numerical order. We note that the kit contains the same items as a kit classified as a set in NY F81504, dated February 7, 2000, except for the addition of a flashlight. That kit was classified according to GRI 3(c) under subheading 8508.20.00, HTSUS.

HOLDING:

The kit is classified in subheading 8505.20.00, HTSUS, the provision for "[E]lectromechanical tools for working in the hand with self-contained electric motor; parts thereof: Saws."

EFFECT ON OTHER RULINGS:

PD E81194, issued May 7, 1999, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT

RELATING TO TARIFF CLASSIFICATION OF A WOOD SPADE DRILL BIT SET AND A LOCK INSTALLATION KIT

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed revocation of ruling letter and treatment relating to the classification of a wood spade drill bit set and a lock installation kit.

SUMMARY: Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a wood spade drill bit set and a lock installation kit under the Harmonized Tariff Schedule of the United States (HTSUS). Similarly, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Comments are invited on the correctness of the proposed actions.

DATE: Comments must be received on or before [30 thirty days from the date of publication in the Customs Bulletin.]

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address during regular business hours.

FOR FURTHER INFORMATION CONTACT: Allyson Mattanah, General Classification Branch, (202) 927-2326.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts, which emerge from the law, are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accord-

ingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and to provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a Black & Decker drill/saw combination kit. Although in this notice Customs is specifically referring to Port Director ruling (NY) F80626, dated December 14, 1999, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. This notice will cover any rulings on this merchandise that may exist but have not been specifically identified. Any party, who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period.

Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importation of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions, or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importation of merchandise subsequent to this notice.

In NY F80626, Customs ruled that a wood spade bit set, (½", ¾" and 1" bits), and a lock installation kit, consisting of a 2 1/8" cup type hole saw, a 1" wood spade bit and mandrel (1/4" HSS pilot drill bit plus arbor), were both classified in subheading 8205.30.6000, HTSUS. NY F80626 is set forth as Attachment "A".

It is now Customs position that both products are correctly classified in subheading 8207.50.60, HTSUS, which provides for "[I]nterchangeable tools for handtools, whether or not power operated

or for machine-tools ...: tools for drilling, other than rock drilling, and parts thereof: other: not suitable for cutting metal, and parts thereof: For handtools, and parts thereof.".

Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NY F80626, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 963775 (*see* Attachment "B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 25, 2000

MARVIN AMERNICK,
(For John Durant, Director)
Commercial Rulings Division

[Attachments]

[ATTACHMENT A]

NY F80626
December 14, 1999
CLA-2-82:RR:NC:1: 115 F80626
CATEGORY: Classification
TARIFF NO.: 8205.30.6000

MS. MICHELE SMITH
SEARS ROEBUCK AND CO.
IMPORT DEPARTMENT 733IMP
3333 Beverly Road, BC 172A-A
Hoffman Estates, Illinois 60179

Re: The tariff classification of Wood Spade Bit Sets from China.

DEAR MS. SMITH:

In your letter dated November 30, 1999 you requested a tariff classification ruling.

The first sample (Stock nbr 73302) is a 3pc Wood Spade Bit Set with sizes of ½", ¾" and 1". The item is for drilling a hole in wood plate.

The second sample (stock nbr 73324) is a lock installation kit, which includes a 2-1/8" hole saw with arbor, ¼" Hss Pilot drill bit, 1" 3 point wood spade bit, 6" long. This item is for drilling a hole in the door before installing a cylindrical lock.

Both samples are hermetically sealed in blister packs.

The samples will be returned as per your request.

The applicable subheading for the Spade Bit Sets will be 8205.30.6000, Harmonized Tariff Schedule of the United States (HTS), which provides for Planes, chisels, gouges and similar cutting tools for working wood and parts thereof: Other (including parts). The rate of duty will be 5% ad valorem.

The rates of duty will remain the same in 2000.

This ruling is being issued under the provisions of Part 177 of the Customs

Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Melvyn Birnbaum at 212-637-7017.

ROBERT B. SWIERUPSKI,
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

HQ 963775
CLA-2 RR:CR:GC 963775AM
CATEGORY: CLASSIFICATION
TARIFF NO.: 8207.50.60

MS. MICHELE SMITH
SEARS, ROEBUCK AND CO.
IMPORT DEPARTMENT #733IMP
3333 Beverly Road, BC 172A-A
Hoffman Estates, IL 60179

Re: NY F80626 revoked; wood spade bit set and lock installation kit

DEAR MS. SMITH:

This is in reference to NY F80626, issued to you by the Customs National Commodity Specialist Division, New York, on December 14, 1999, concerning the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a three piece wood spade bit set, and a lock installation kit. We have reviewed the decision in NY F80626 and have determined that the classification set forth, for both products, is in error. This ruling revokes NY F80626.

FACTS:

Both products are used with a power drill. Samples have been provided. The three piece wood spade bit set (Stock # 73302) (made in China) includes ½", ¾" and 1" bits said to be for drilling holes in wood plate. All are 3 point style, 6" long with a 5.4mm hex shank and made of heat treated medium carbon steel. The cutting part of the bits does not contain any chromium, molybdenum, tungsten or vanadium. The wood spade bit set is blister packed on a cardboard backing.

The lock installation kit (Stock #73324) (made in Taiwan) includes a 2 1/8" cup type hole saw, a 1" wood spade bit and mandrel (1/4" HSS pilot drill bit plus arbor). The drill bit is attached to the arbor. The arbor has a threaded part and a nut to attach and lock the hole saw to the arbor. In operation, the arbor with the pilot drill and hole saw mounted to it is attached to a power drill. The hole is cut for the lock mechanism first. A template is used to indicate where to start the hole with the pilot drill on one side of the door, with the hole saw following. The process is then repeated on the other side. The wood spade bit is then used to drill the hole for the latch mechanism. The cutting part of the wood spade bit contains no chromium, molybdenum, titanium or vanadium. The cutting part of the pilot drill bit contains less than .2% chromium and molybdenum and no tungsten or vanadium. The lock installation kit is contained in a molded clear plastic with a cardboard backing stapled to the plastic.

In NY F80626, Customs classified both products in subheading 8205.30.6000, HTSUS, which provides for handtools (including glass cutters) not elsewhere specified or included: planes, chisels, gouges and similar cutting tools for working wood, and parts thereof: other.

ISSUES:

(1) Whether a kit consisting of three wood spade bits and a kit consisting of a 2 1/8" cup type hole saw, a wood spade bit and mandrel (drill bit plus arbor) are classified under heading 8205, HTSUS, which provides for handtools (including glass cutters) not elsewhere specified or included, or under heading 8207, HTSUS, which provides for interchangeable tools for handtools, whether or not power operated or for machine tools.

(2) Whether the components of either kit are classified as a set.

LAW AND ANALYSIS:

Merchandise imported into the U.S. is classified under the HTSUS. Tariff classification is governed by the principles set forth in the General Rules of Interpretation (GRIs) and, in the absence of special language or context that requires otherwise, by the Additional U.S. Rules of Interpretation. The GRIs and the Additional U.S. Rules of Interpretation are part of the HTSUS and are to be considered statutory provisions of law.

GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any related section or chapter notes and, unless otherwise required, according to the remaining GRIs taken in order. GRI 6 requires that the classification of goods in the subheadings of headings shall be determined according to the terms of those subheadings, any related subheading notes and *mutatis mutandis*, to the GRIs. In interpreting the HTSUS, the Explanatory Notes (ENs) of the Harmonized Commodity Description and Coding System may be utilized. The ENs, although not dispositive or legally binding, provide a commentary on the scope of each heading, and are generally indicative of the proper interpretation of the HTSUSA. *See* T.D. 89-80, 54 Fed. Reg. 35127 (August 23, 1989).

The following HTSUS headings are under consideration:

8205 Handtools (including glass cutters) not elsewhere specified or included; blow torches and similar self-contained torches; vises, clamps and the like, other than accessories for and parts of machine tools; anvils; portable forges; hand- or pedal- operated grinding wheels with frameworks; base metal parts thereof:

8207 Interchangeable tools for handtools, whether or not power-operated, or for machine-tools (for example, for pressing, stamping, punching, tapping, threading, drilling, boring, broaching, milling, turning or screwdriving), including dies for drawing or extruding metal, and rock drilling or earth boring tools; base metal parts thereof:

The ENs for heading 8205 indicate that the heading excludes: "(b) interchangeable tools designed for use in hand tools, mechanical or not, in machine tools or in power-operated hand tools. (e.g., screwdriver bits and rock drilling bits) (heading 8207)." While wood spade bits are not specifically included in the examples, they are, *ejusdem generis*, a type of bit closely related to those specified. Wood spade bits are interchangeable in power drills, a hand tool. Hence, the wood spade bits are excluded from classification in heading 8205, HTSUS. Rather, the wood spade bits are classified in heading 8207, HTSUS. Specifically, they are classified in subheading 8207.50.6000, HTSUS, which provides for "[I]nterchangeable tools for handtools, whether or not power operated or for machine-tools ...: tools for drilling, other than rock drilling, and parts thereof: other: not suitable for cutting metal, and parts thereof: For handtools, and parts thereof."

Similarly, the wood spade bit and the pilot drill bit of the lock installation kit are also classified in heading 8207, HTSUS. The hole saw falls in heading 8202, HTSUS, the provision for "[H]andsaws, and metal parts thereof; blades for saws of all kinds (including slitting, slotting or toothless saw blades), and base metal parts thereof: . . ." The arbor falls under heading 8466, HTSUS, the provision for " . . .tool holders for any type of tool for working in the hand: . . ."

GRI 3(b) provides for the classification of goods put up in sets for retail sale. The rule states in pertinent part:

(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to 3(a), shall be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

The EN to GRI 3(b) state:

(VII) In all these cases the goods are to be classified as if they consisted of the material or component which gives them their essential character, insofar as this criterion is applicable.

(VIII) The factor which determines the essential character will vary as between different kinds of goods. It may, for example, be determined by the nature of the material or component, its bulk, quantity, weight or value, or by the role of a constituent material in relation to the use of the 0goods.

* * *

(X) For the purposes of this Rule, the term "goods put up in sets for retail sale" shall be taken to mean goods which:

(a) consist of at least two different articles which are, prima facie, classifiable in different headings;

(b) consist of products or articles put up together to meet a particular need or carry out a specific activity; and

(c) are put up in a manner suitable for sale directly to users without repacking.

GRI 3(c) states: "When goods cannot be classified by reference to 3(a) or 3(b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration."

Although the wood spade bit set is stated to be and is sold as a "set", it is not classified as a "set" for tariff purposes under rule 3(b) because all of the bits are classifiable in the same heading (discussed above), thus failing the first requirement of EN (X) to GRI 3(b). The lock installation kit is classified as a "set" because the items meet all three requirements of EN (X). The kit consists of at least two different articles that are, *prima facie*, classifiable in different headings (discussed above). The items in the kit are used in conjunction with one another to carry out the specific activity of installing a lock. The items are put up in a manner suitable for sale directly to users without repacking.

However, three of the articles in the set, the wood spade bit, the drill bit and the hole saw equally impart to the set its essential character because each are used equally in the installation of a lock. The arbor does not merit equal consideration with the other articles as it is simply used to fit the hole saw to the pilot drill bit. As provided, it is inseparable from the pilot drill bit and is essentially an extension to the bit. Hence, the set is classified by means of GRI 3(c) in heading 8207, HTSUS, that heading which comes last in numerical order amongst those headings that merit equal consideration.

HOLDING:

The kit is classified in subheading 8207.50.60, HTSUS, the provision for "[I]nterchangeable tools for handtools, whether or not power operated or for machine-tools ...: tools for drilling, other than rock drilling, and parts thereof: other: not suitable for cutting metal, and parts thereof: For handtools, and parts thereof."

EFFECT ON OTHER RULINGS:

NY F80626, issued December 14, 1999, is revoked.

JOHN DURANT,
Director,
Commercial Rulings Division

PROPOSED REVOCATION OF RULING LETTERAND TREATMENT RELATING TO THE CLASSIFICATION OF A "COLLAR BANDANA"

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of proposed revocation of a tariff classification ruling and revocation of treatment relating to the classification of a "Collar Bandana".

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification of a "Collar Bandana" under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before (30 days from the date of publication of notice in the Customs Bulletin).

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, at (202) 927-2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition,

both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a "Collar Bandana." Although in this notice, Customs is specifically referring to New York Ruling (NY) 816981 dated January 2, 1996, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice.

In NY 816981, Customs ruled that a "Collar Bandana" consisting of a woven cotton fabric with a nylon lining and hook and loop closure was properly classified in subeading 6217.10.9030, HTSUS, which provides for "Other made up clothing accessories; parts of garments or of clothing accessories other than those of heading 6212: Accessories: Other, of man-made fibers." This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs reviewed the classification of these items and determined that the cited ruling is in error. We have determined that this item is classifiable in subheading 6307.90.9989, HTSUS, which is the provision for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other".

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY

816981 dated January 2, 1996, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 960568 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action consideration will be given to any written comments timely received.

Dated: September 25, 2000

JOHN E. ELKINS
(For John Durant, Director)
Commercial Rulings Division

[Attachment]

[ATTACHMENT A]

NY 816981
January 2, 1996
CLA-2-62:RR:NC:5:353 816981
CATEGORY:Classification
TARIFF NO.: 6217.10.9030(EN)

MR. STEPHEN M. ZELMAN
STEPHEN M. ZEHNAN & ASSOCIATES
845 Third Ave.
New York, N.Y. 10022

Re: The tariff classification of a collar bandana from China.

DEAR MR. ZELMAN:

In your letter dated November 22, 1995, on behalf Sportsmed International, Inc., you requested a classification ruling.

The submitted sample is a collar bandana consisting of a woven cotton fabric with a nylon lining, and a hook and loop closure. It is designed to be worn loosely around the neck to provide warmth to the user. There is an opening at the end of the collar bandana were a heat packet can to inserted to provide additional warmth to the user. The collar functions much the same way as a dickie or mock turtleneck.

The applicable subheading for the collar bandana will be 6217.10.9030(EN), Harmonized Tariff Schedule of the United States (HTS), which provides for other made up clothing accessories; parts of garments or of clothing accessories, other than those of heading 6212: Accessories: Other, Of man-made fibers. The duty rate will be 15.4 percent ad valorem. The duty rate for 1996 will be 15.3 percent ad valorem.

The collar bandana falls within textile category designation 659. Based upon international textile trade agreements products of China are subject to quota and the requirement of a visa.

The designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes. To obtain the most current information available, we suggest that you check, close to the time of shipment, the Status Report on Current Import Quotas (Restraint Levels), an internal issuance of the

U.S. Customs Service, which is available for inspection at your local Customs office.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Martin Weiss at 212-466-5881.

ROGER J. SILVESTRI,
Director,
National Commodity
Specialist Division

[ATTACHMENT B]

HQ 960568
CLA-2 RR:CR:TE 960568 ASM
CATEGORY: Classification
TARIFF NO.: 6307.90.9989

MR. STEPHEN M. ZELMAN
STPHEN M. ZELMAN & ASSOCIATES
845 Third Ave.
New York, N.Y. 10022

Re: Revocation of NY 816981; classification of a "Collar Bandana"

DEAR MR. ZELMAN:

This is in regard to NY 816981 issued to your client Sportsmed International, Inc., on January 2, 1996, which involved the tariff classification ruling of a product identified as a "Collar Bandana". We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY 816981 by providing the correct classification for the subject product.

FACTS:

The subject goods, identified as a "Collar Bandana", consists of a bandana which is rectangular in shape with rounded ends. The bandana measures approximately 2 and ¾ inches by 11 and ½ inches. The bandana is constructed with an exterior of woven cotton, lined with woven 65 percent polyester and 35 percent cotton and has pocket-like openings and a "Velcro" closure which is designed to contain "heat packs." The heat packs are imported separately and contain a chemical mixture, packaged in an airtight envelope. Upon opening, the chemical mixture within the bags reacts with oxygen to generate heat. Printed information on the bandana's packaging indicates it is to be used as a carrier for the heat packs. The bandana is intended to be worn around the neck, one size fits all, and fits loosely around the neck. Upon importation into the United States, the bandanas are always packaged together with the heat packs. The bandanas are never sold separately.

NY 816981, dated January 2, 1996, classified the "Collar Bandana", which was imported by itself, in subheading 6217.10.9030, Harmonized Tariff Schedule of the United States Annotated (HTSUSA), as "Other made up clothing accessories; parts of garments or of clothing accessories other than those of heading 6212: Accessories: Other, of man-made fibers."

In HQ 958942, dated April 7, 1997, Customs found the subject goods classifiable under subheading 6307.90.9989, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other". In this ruling, it was determined that the article had been designed to act as a carrier of replaceable chemical packs which in turn, provide warmth to the wearer.

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive, are used to determine the proper interpretation of the HTSUSA by providing a commentary on the scope of each heading of the HTSUSA. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The bandana fits loosely around the neck, and is neither decorative nor fashionable. If worn alone, it would not provide sufficient warmth to the wearer. In HQ 958942, it was determined that the product in question did not function as an accessory because it failed to provide protection or decoration to the wearer when worn alone. Furthermore, the bandana had been designed and marketed for use as a carrier and is intended to be used exclusively with the heat packs (imported separately) and packaged with the bandana upon importation into the U.S. Thus, HQ 958942, dated April 7, 1997, is the basis for the proposed revocation of NY 816981, dated January 2, 1996.

HOLDING:

NY 816981, dated January 2, 1996, is hereby revoked.

The subject merchandise is correctly classified in subeading 6307.90.9989, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other". The general column one duty rate is 7 percent *ad valorem*.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that your client check, close to the time of shipment, the *Status on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, your client should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF A BIB APRON OF WOVEN COTTON FABRIC

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of proposed revocation of a tariff classification ruling and revocation of treatment relating to the classification of a bib apron of woven cotton fabric.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification of a bib apron of woven cotton fabric under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before (30 days from the date of publication of notice in the Customs Bulletin).

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, at (202) 927-2380.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts, which emerge from the law, are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and re-

lated laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a bib apron. Although in this notice, Customs is specifically referring to Customs St. Albans, Vermont District Ruling (DD) 899669 dated July 21, 1994, this notice covers any rulings on this merchandise that may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final notice.

In DD 899669, Customs ruled that a bib apron of woven cotton fabric (Item # P3G02) consisting of a woven cotton fabric was properly classified in subeading 6307.90.9989, HTSUS. In accordance with the 2000 HTSUS, this provision provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." The rate of duty is 7 percent *ad valorem*. This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs reviewed the classification of these items and determined that the cited ruling is in error. We have determined that this item is classifiable in subheading 6211.42.0081, HTSUS. Under the 2000 HTSUS, this is the provision for "Track suits, ski-suits and swimwear; other garments: Other garments, women's or girls: Of cotton: Other."

The rate of duty is 8.3 percent *ad valorem*. The textile restraint category is 359.

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke DD 899669 dated July 21, 1994, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 960567 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action consideration will be given to any written comments timely received.

Dated: September 25, 2000

JOHN E. ELKINS,
(For John Durant, Director,)
Commercial Rulings Division

[Attachment]

[ATTACHMENT A]

DD 899669
July 21, 1994
CLA-2-63:S:N:N:H06 REH
CATEGORY: Classification
TARIFF NO.: 6307.90.9989

DG INTERNATIONAL
117 Newman Street
Metuchen, NJ 08840

ATTENTION: A. DASGUPTA

Re: The tariff classification a bib apron from India.

DEAR MR. DASGUPTO:

In your letter dated June 28, 1994, you requested a tariff classification ruling on behalf of Mira Knitting Works. The sample is being returned as requested.

Your submitted sample, identified as Item # P3G02 "Canvas Apron", is made from a heavy woven cotton fabric. It is a bib-type shop apron and features two front pocket compartments and self-fabric edge capping which extends out to form a neck loop and waist ties.

The applicable subheading for the #P3G02 apron is 6307.90.9989 Harmonized Tariff Schedule of the United States (HTS), which provides for other made-up articles: Other: Other: Other... Other... The rate of duty will be 7 percent ad valorem.

This ruling is being issued under the provisions of Section 177 of the Customs Regulations (19 C.F.R. 177).

A copy of this ruling letter should be attached to the entry documents filed the time this merchandise is imported. If the documents have been filed without a copy, this ruling should be brought to the attention of the Customs officer handling the transaction.

MICHAEL D'AMBROSIO,
District Director,
St. Albans, Vt.

[ATTACHMENT B]

HQ 960567
CLA-2 RR:CR:TE 960567 ASM
CATEGORY: Classification
TARIFF NO.: 6211.42.0081

MR. DASGUPTA
DG INTERNATIONAL
117 Newman Street
Metuchen, NJ 08840

Re: Revocation of DD 899669; classification of a bib apron of woven cotton fabric

DEAR MR. DASGUPTA:

This is in regard to DD 899669 issued to you on July 21, 1994, which involved the tariff classification ruling of a bib apron of woven cotton fabric. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes DD 899669 by providing the correct classification for the subject product.

FACTS:

The subject article is a bib apron (Item # P3G02) described in DD 899669 as a "Canvas Apron" made from heavy woven cotton fabric. It is a bib-type shop apron and features two front pocket compartments and self-fabric edge capping which extends out to form a neck loop and waist ties. DD 899669, ruled that the apron was properly classified in subheading 6307.90.9989, HTSUSA. In accordance with the 2000 HTSUSA, this provision provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other." The rate of duty is 7 percent *ad valorem*.

ISSUE:

What is the proper classification for the merchandise?

LAW AND ANALYSIS:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive, are used to determine the proper interpretation of the HTSUSA by providing a commentary on the scope of each heading of the HTSUSA. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In HQ 959540, dated April 7, 1997, a ruling issued to you on similar aprons, Customs found the subject goods classifiable under subheading 6211.42.0081, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other". The basis for this classification was that the EN to heading 6211 reference the EN to heading 6114 as follows: "The provisions of the Explanatory Note to heading 61.12 concerning track suits, ski suits and swimwear and of the Explanatory Note to heading 61.14 concerning other garments apply, *mutatis mutandis*, to the articles of this heading." Heading 6114, HTSUSA, provides for "Other garments, knitted or crocheted" and the EN states that the heading includes aprons, boiler suits (coveralls), smocks and other protective clothing of a kind worn by mechanics, factory workers, surgeons, etc. (emphasis supplied).

As noted in HQ 959540, the subject apron provides ample coverage to the wearer for protective purposes, *i.e.*, keeping the wearer's clothes from becoming dirty while in the performance of work shop activities, etc. The three pockets on this apron are

quite spacious and not specifically designed for any particular tool. Thus, applying the EN of heading 6114, *mutatis mutandis*, to heading 6211, the aprons at issue are properly classified under heading 6211, HTSUSA.

HOLDING:

DD 899669, dated July 21, 1994, is hereby revoked.

The subject merchandise is correctly classified under subheading 6211.42.0081, HTSUSA, which provides for "Other made up articles, including dress patterns: Other: Other: Other: Other: Other". The general column one duty rate is 8.3 percent. The textile restraint category is 359.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest that you check, close to the time of shipment, the *Status on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

JOHN DURANT,
Director,
Commercial Rulings Division

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19 CFR PART 177

MODIFICATION OF RULING LETTERS AND REVOCATION OF TREATMENT RELATING TO TARIFF CLASSIFICATION OF MUSICAL PILLOWS

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of modification of two tariff classification rulings and revocation of treatment relating to the classification of musical pillows.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is modifying two ruling letters relating to the tariff classification of musical pillows under the Harmonized Tariff Schedule of the United States (HTSUS), and is revoking any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed action was published in the CUSTOMS BULLETIN of August 16, 2000, Volume 34, Number 33. No comments were received in response to this notice.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after [60 days after publication in the *Customs Bulletin*].

FOR FURTHER INFORMATION CONTACT: Teresa Frazier, Commercial Rulings Division (202) 927-2511.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**". These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to Customs obligations, a notice of proposed modification of HQ 087316 and HQ 082738 was published in the CUSTOMS BULLETIN of August 16, 2000, Volume 34, Number 33. No comments were received in response to this notice. In Headquarters Ruling Letter (HQ) HQ 087316 dated July 9, 1990, Customs ruled, among other items not herein relevant, that a heart shaped music box (item #2412) which was designed to be hung on a baby's crib, was classifiable in subheading 6307.90.9590, HTSUS, which provides for pillows. In HQ 082738 dated February 8, 1990, Customs ruled, among other items not herein relevant, that a stuffed Daisy Kingdom Musical Pillow (item # 46-3500) which contained a wind-up music box, was classifiable in subheading 9503.9070.30, HTSUS. Since the issuance of these rulings, Customs has reconsidered these rulings and has determined that they are incorrect. Accordingly, we are modifying HQ 087316 and HQ 082738.

Pursuant to 19 U.S.C. 1625(c)(1), Customs is modifying HQ 087316 and HQ 082738 and any other ruling not specifically identified to reflect the proper classification of the merchandise pursuant to the analysis set forth in HQ 964151 and HQ 964150 (see "Attachments A-B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Cus-

toms is revoking any treatment previously accorded by Customs to substantially identical transactions.

As stated in the proposed notice, this modification will cover any rulings on this issue which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should have advised Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C . 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should have advised Customs during this notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

DATED: September 26, 2000

MARVIN AMERNICK,
(For John Durant, Director,)
Commercial Rulings Division

[Attachments]

[ATTACHMENT A]

HQ 964151
September 26, 2000
CLA-2 RR: CR:GC 964151 TF
CATEGORY: Classification
TARIFF NO.: 9208.10.00

MS. LAURA FUMAGALLI, IMPORT/EXPORT MANAGER
DAKIN, INC.
7000 Marina Blvd.,
Brisbane, CA 94005

RE: Modification of HQ 082738; other toys and models

DEAR MS. FUMAGALLI:

This is in regard to HQ 082738 issued to you on February 8, 1990, by this office in reply to your letter of July 19, 1988, in which you requested a tariff classification ruling, of among other items, a Daisy Kingdom musical pillow. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling modifies HQ 082738 by providing the correct classification for the Daisy Kingdom musical pillow.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C 1625(c)), notice of the proposed modification of HQ 082738 was published on August 16, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 33. No comments were received in response to the notice.

FACTS:

The subject good, identified as item #46-3500, is a Daisy Kingdom Musical Pillow, which consists of a small stuffed pillow containing a wind-up music box. This item is designed to be tied onto a baby's crib.

In HQ 082738, Customs found the subject good classifiable as other toys within subheading 9503.90.00, Harmonized Tariff Schedule of the United States.

ISSUE:

Whether the subject goods are classifiable as music boxes in subheading 9208.10.00, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

9208	Music boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of this chapter; decoy calls of all kinds; whistles, call horns and other mouth-blown sound signaling instruments:
9208.10.00	Music boxes
*	* * *
9503	Other toys; reduced-size ("scale") models and similar recreational models, working or not; puzzles of all kinds; parts and accessories thereof:
9503.90.00	Other Parts and accessories
*	* * *

In HQ 082738, Customs held the subject goods to be classifiable as toys within subheading 9503.90 which provides for "other toys; reduced-size ("scale") models and similar recreational models...."

We do not agree that the subject goods are classifiable as toys within heading 9503.90.00, HTSUS. Although the term "toy" is not defined in the HTSUS, the ENs to Chapter 95 provide that toys are intended essentially for the amusement of persons (children and adults). In the instant case, the subject goods do not amuse.

Rather, they play tunes which are intended to soothe and lull a child to sleep. Based on these facts, we do not find the goods to be classifiable as toys within heading 9503, HTSUS.

We must now consider whether the subject goods are classifiable as music boxes within heading 9208, HTSUS. In the *Merriam-Webster's Collegiate Dictionary*, the term "music box" is defined as a container enclosing an apparatus that reproduces music mechanically when activated by clockwork. *Id.* at 767 (10th Ed.) In the instant case, the subject goods contain a mechanized music box which plays tunes and is incorporated in a case. The HTSUS provides specifically for "music boxes" in heading 9208, HTSUS.

The ENs for heading 9208, HTSUS, categorize music boxes as musical instruments which are precluded from classification in any other heading of this chapter. It states, in pertinent part, that music boxes:

> "[c]onsist of small mechanical movements playing tunes automatically, incorporated into boxes or various other containers. The main component is a cylinder set with pins (according to the notes of the tune to be played); on rotating, the pins contact metal tongues arranged like the teeth of a comb, causing them to vibrate and produce the notes. The components are mounted on a plate and the cylinder is rotated either by a spring-operated (clockwork) motor, which is wound with a key, or directly by a handle. In some types, the cylinder may be replaced by a sheet-metal disc made on the hill and dale principle.
>
> Articles which incorporate a musical mechanism but which are essentially utilitarian or ornamental in function (for example, clocks, miniature wooden furniture, glass vases containing artificial flowers, ceramic figurines) are not regarded as musical boxes within the meaning of this heading. These articles are classified in the same headings as the corresponding articles not incorporating a musical mechanism."

Although it is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS, we do not find the ENs to be dispositive regarding the classification of ornamental music box merchandise. EN 92.08 provides where a music box possesses essentially an ornamental or utilitarian function, it is excluded from classification as a music box in heading 9208, HTSUS. However, as set forth in HQ 958543 dated June 17, 1996, (published in the *Customs Bulletin* on July 3, 1996, Vol. 30, No. 27), Customs follows a more liberal interpretation of the tariff term 'music box' as found in *Pukel v. U.S.*, 60 Cust. Ct. 672, C.D. 3497 (1968) and *Amico v. U.S.*, 66 CCPA 5 (1978).

The subject goods are similar to the dancing figurine music box in *Amico*. Both items serve a purpose for the user. In the case of the subject goods, they provide soothing music in the form of an attractive pillow to an infant. The dancing figurine music box, which played waltz music in *Amico*, was marketed to teenage girls. It simulated appropriate dance movements related to waltz music. In both cases, the goods are "subordinate and incidental to the function of the music box". If both were alone, the musical mechanism would be unattractive and of "little consumer appeal". *See Amico* at 9.

In *Pukel*, the court interpreted the term 'music box' in item 725.50, Tariff Schedules of the United States (TSUS) (the precursor tariff provision to subheading 9208.10.00), as a small mechanical movement playing tunes automatically, which is incorporated into a box, case or cabinet. While the instant pillow contains a music box, the musical mechanism is enclosed and surrounded by polyester fiberfill and fabric. If the term "container" is viewed liberally, the music box definition is satisfied.

Although *Pukel* is a TSUS case, it has HTSUS implications. The Omnibus Trade Act of 1988 provides that earlier tariff decisions must not be disregarded in applying the HTSUS. Rather, on a "case by case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS. " H. Rep. No. 100-576, 100th Cong., 2d Sess. 548,550 (1988).

In this instance the ENs are not dispositive. Rather we find the HTSUS and TSUS rulings as well as the court cases to be persuasive. The main purpose of a music box

is to entertain by playing music. An ornamental article which otherwise meets the music box requirements remains classifiable under heading 9208, HTSUS.

Because the Daisy Kingdom musical pillow meets the definition of heading 9208, HTSUS, we find it to be classifiable as a music box within subheading 9208.10.00, HTSUS.

HOLDING:

Under the authority of GRI 1, the Daisy Kingdom musical pillow is classifiable as a music box within subheading 9208.10.00, HTSUS.

HQ 082738, dated February 8, 1990, is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(For John Durant, Director)
Commercial Rulings Division

[ATTACHMENT B]

HQ 964150
September 26, 2000
CLA-2 RR:CR:GC 964150 TF
CATEGORY: Classification
TARIFF NO.: 9208.10.00

MR. JEFF MUSSER
EXPEDITORS INTERNATIONAL
880 Hinckley
P.O. Box 4389
Burlingame, CA 94011-4389

RE: Modification of HQ 087316; Heart Shaped Music Box

DEAR MR. MUSSER:

This is in regard to HQ 087316 issued to you on July 9, 1990, by this office in reply to your letter dated April 27, 1990, on behalf of Paper White, Ltd., in which you requested a tariff classification ruling of several items, including a heart shaped music box. We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling modifies HQ 087316 by providing the correct classification for the heart shaped music box.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C 1625(c)), notice of the proposed modification of HQ 087316 was published on August 16, 2000, in the CUSTOMS BULLETIN, Volume 34, Number 33. No comments were received in response to the notice.

FACTS:

The subject good, identified as item # 2412, is a heart shaped music box which is designed to be hung on a baby's crib. The pillow is 55% linen, 45% cotton and stuffed with 100% polyester. The pillow contains a plastic, spring-operated musical mechanism which plays a tune.

In HQ 087316, Customs ruled the subject good to be classifiable as "other made up articles" within subheading 6307.90.95, Harmonized Tariff Schedule of the United States.

ISSUE:

Whether the subject good is classifiable as other made up articles within subheading 6307.90.95, HTSUS, or as a music box within subheading 9208.10.00, HTSUS.

LAW AND ANALYSIS:

Merchandise is classifiable under the Harmonized Tariff Schedule of the United States (HTSUS) in accordance with the General Rules of Interpretation (GRIs). GRI 1, HTSUS, provides that classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis of GRI 1, HTSUS, and if the headings or notes do not require otherwise, the remaining GRIs 2 through 6, HTSUS, may be applied.

The Harmonized Commodity Description and Coding System Explanatory Notes (ENs) constitutes the official interpretation of the HTSUS. The ENs, although not dispositive, are used to determine the proper interpretation of the HTSUS by providing a commentary on the scope of each heading of the HTSUS. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

The HTSUS headings under consideration are as follows:

6307	Other made up articles, including dress patterns:
6307.90.95	Other...other
*	* * * *
9208	Music boxes, fairground organs, mechanical street organs, mechanical singing birds, musical saws and other musical instruments not falling within any other heading of this chapter; decoy calls of all kinds; whistles, call horns and other mouth-blown sound signaling instruments:
9208.10.00	Music boxes
*	* * * *

The *Merriam-Webster's Collegiate Dictionary* defines the term "music box" as a container enclosing an apparatus that reproduces music mechanically when activated by clockwork. *Id.* at 767 (10th Ed.) Although the music pillow is a miniature pillow which contains a mechanized music box which plays a tune, the HTSUS contains a specific provision for "music boxes" in heading 9208, HTSUS.

The ENs for 9208, HTSUS, categorize music boxes as musical instruments which are precluded from classification in any other heading of this chapter. It states, in pertinent part, that music boxes:

> "[c]onsist of small mechanical movements playing tunes automatically, incorporated into boxes or various other containers. The main component is a cylinder set with pins (according to the notes of the tune to be played); on rotating, the pins contact metal tongues arranged like the teeth of a comb, causing them to vibrate and produce the notes. The components are mounted on a plate and the cylinder is rotated either by a spring-operated (clockwork) motor, which is wound with a key, or directly by a handle. In some types, the cylinder may be replaced by a sheet-metal disc made on the hill and dale principle.
>
> Articles which incorporate a musical mechanism but which are essentially utilitarian or ornamental in function (for example, clocks, miniature wooden furniture, glass vases containing artificial flowers, ceramic figurines) are not regarded as musical boxes within the meaning of this heading. These articles are classified in the same headings as the corresponding articles not incorporating a musical mechanism."

Although it is Customs practice to follow, whenever possible, the terms of the ENs when interpreting the HTSUS, we do not find the ENs to be dispositive regarding the classification of ornamental music box merchandise. EN 92.08 provides where a music box possesses essentially an ornamental or utilitarian function, it is excluded from classification as a music box in heading 9208, HTSUS. However, as set forth in HQ 958543 dated June 17, 1996, (published in the *Customs Bulletin* on July 3, 1996, Vol. 30, No. 27), Customs follows a more liberal interpretation of the tariff term 'music box' as found in *Pukel v. U.S.*, 60 Cust. Ct. 672, C.D. 3497 (1968) and

Amico v. U.S., 66 CCPA 5 (1978).

The subject goods are similar to the dancing figurine music box in *Amico*. Both items serve a purpose for the user. In the case of the subject goods, they provide soothing music in the form of an attractive pillow to an infant. The dancing figurine music box, which played waltz music in *Amico*, was marketed to teenage girls. It simulated appropriate dance movements related to the waltz music. In both cases, the goods are "subordinate and incidental to the function of the music box". If both were alone, the musical mechanism would be unattractive and of "little consumer appeal". *See Amico* at 9.

In *Pukel*, the court interpreted the term 'music box' in item 725.50, Tariff Schedules of the United States (TSUS) (the precursor tariff provision to subheading 9208.10.00), as a small mechanical movement playing tunes automatically, which is incorporated into a box, case or cabinet. While the instant pillow contains a music box, the musical mechanism is enclosed and surrounded by polyester fiberfill and fabric. If the term "container" is viewed liberally, the music box definition is satisfied.

Although *Pukel* is a TSUS case, it has HTSUS implications. The Omnibus Trade Act of 1988 provides that earlier tariff decisions must not be disregarded in applying the HTSUS. Rather, on a "case by case basis, prior decisions should be considered instructive in interpreting the HTSUS, particularly where the nomenclature previously interpreted in those decisions remains unchanged and no dissimilar interpretation is required by the text of the HTSUS." H. Rep. No. 100-576, 100th Cong., 2d Sess. 548,550 (1988).

In this instance the ENs are not dispositive. Rather we find the HTSUS and TSUS rulings as well as the court cases to be persuasive. The main purpose of a music box is to entertain by playing music. An ornamental article which otherwise meets the music box requirements remains classifiable under heading 9208, HTfSUS.

Because the heart shaped music box meets the definition of heading 9208, HTSUS, we find it to be classifiable within subheading 9208.10.00, HTSUS.

HOLDING:

Under the authority of GRI 1, the heart shaped music box is provided in heading 9208, HTSUS, and is classifiable in subheading 9208.10.00, HTSUS

HQ 087316, dated July 9, 1990, is hereby modified. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the CUSTOMS BULLETIN.

MARVIN AMERNICK,
(For John Durant, Director)
Commercial Rulings Division

REVOCATION OF TREATMENT OR RULING RELATING TO THE CLASSIFICATION OF OFFSET PRINTING POSTERS

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of revocation of treatment or ruling relating to the classification of certain offset printing posters.

SUMMARY: Pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625c)(2)), this notice advises interested parties that Customs is revoking a treatment previously accorded by Customs to merchandise described as offset printing posters and to any substantially identical

merchandise or contrary ruling. Notice of the proposed revocation was published in the *Customs Bulletin* of August 16, 2000, Vol. 34, No. 33. Three comments were received.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after (60 days after publication in the *Customs Bulletin*).

FOR FURTHER INFORMATION CONTACT: John Elkins, Textile Branch, (202) 927-2380.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "**informed compliance**" and "**shared responsibility**." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In reply to the proposed revocation of treatment or ruling relating to the classification of offset printing posters, Customs received comments from three additional importers during the notice period. Each importer claims that they have a treatment under 19 U.S.C. 1625(c)(2) with respect to the classification of their merchandise. Customs is in the process of reviewing those claims. If those claims are granted, they will be subject to the effective date set forth in this notice.

Customs, pursuant to 19 U.S.C. 1625(c)(2), is revoking the treatment previously accorded to this merchandise, and any other treatment of substantially identical merchandise or of any contrary ruling to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964035 (see "Attachment " to this document).

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision

(i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: September 25, 2000

JOHN E. ELKINS,
(For John Durant, Director)
Commercial Rulings Division

[Attachment]

[ATTACHMENT]

HQ 964035
September 25, 2000
CLA-2 RR:CR:TE 964035 RH
CATEGORY: Classification
TARIFF NO.: 4911.91.2020

MR. HENRI BORIUS
CLOVER EDITIONS
PMB 909
1032 Irving Street
San Francisco, CA 94122

DEAR MR. BORIUS:

This is in response to your letter of March 28, 2000 to the Customs Area Director, San Francisco which has been referred to us for reply in which you claim a treatment under 19 USC 1625(c) with respect to the classification under the Harmonized Tariff Schedule of the United States (HTSUS) for certain offset printing posters.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of treatment was published on August 16, 2000, in the *Customs Bulletin*, Volume 34, Number 33. Three comments were received.

FACTS:

The subject merchandise consists of offset printing posters which you state were previously imported by you under subheading 4911.91.4020, HTSUSA, which provides for, among other things, posters other than lithograph on paper. You object to Customs recent reclassification of this merchandise under subheading 4911.91.2020, HTSUSA, which provides for, among other things, lithograph on paper or paperboard.

Specifically, the merchandise involved in this matter was entered more than 50 times erroneously for at least eleven years, examined at least six times by Customs, and you were never informed the merchandise was misclassified. The erroneous classification was only discovered as a result of increased Customs review of the merchandise because of sanctions on certain products of the European Community as a consequence of the "banana war".

ISSUE:

What is the proper classification for the subject merchandise? Is there a treatment under the provisions of 19 USC 1625(c)(2) for your merchandise based on the above facts?

LAW AND ANALYSIS:

With respect to the first issue, classification of merchandise under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is governed by the General Rules of Interpretation (GRI). GRI 1 provides that classification be determined according to the terms of the headings and any relative section or chapter notes, taken in order. Merchandise that cannot be classified in accordance with GRI 1 is to be classified in accordance with subsequent GRI.

The subject merchandise is referred to as "offset" printing posters. Before we arrive at the proper classification for this merchandise one must first understand the relevant concepts. "Lithography" is defined in *Webster's Deluxe Unabridged Dictionary*, 1979, at 1056, as:

> the art or process of printing from a flat stone or metal plate by a method based on the repulsion between grease and water: the design is put on the surface with a greasy material, and then water and printing ink are successively applied; the greasy parts, which repel water, absorb the ink but the wet parts do not. [Emphasis added]

In *Pocket Pal. A Graphic Arts Production Book*, 1974, at 32, lithography is defined as:

> Lithography uses the *planographic* method. The image and non-printing areas are essentially on the same plane of the surface of a thin metal plate, and the definition between them is maintained chemically. Printing is from a plane or flat surface, one which is neither raised nor depressed.

"Offset lithography" is defined in *The Dictionary of Paper*, 1980, at 288, as:

> An adaptation of the principles of stone (or direct) lithography, in which the design is drawn or photographically reproduced upon a thin, flexible metal plate which is curved to fit a revolving cylinder. The design from this plate is transferred to or offset onto a rubber blanket carried upon another cylinder, which in turn transfers the design to the paper, cloth, metal, etc.

The term "offset" is defined in the same source, at 287, as:

> A technique in printing by which the ink images are transferred from the plate first to an intermediate rubber blanket and then to the material being printed. This technique, which reduces plate wear and permits printing on rougher material, is most commonly associated with lithographic printing. For this reason, the word "offset" alone is sometimes used to indicate offset lithography.

In *Pocket Pal. A Graphic Arts Production Book*, 1974, at 32, in a discussion of "offset lithography", it states:

> Transferring the image from the plate to a rubber blanket before transfer to the paper is called the *offset principle*. Most lithography is printed in this way, and the term *offset* has become synonymous with lithography.

As such, we emphasize that a critical concept in the classification of this merchandise is the understanding, as reflected in the above definitions, that the term "offset method" of printing is in fact, used to indicate a particular type of lithography, or stated another way, what may or may not be an adaptation of lithography. In the case of the subject merchandise, that adaptation is "offset lithography".

There is some confusion with respect to the classification of this merchandise in as far as how merchandise, described by the above referenced terms, is provided for under the tariff. In this respect, there are two headings which merit review. Heading 4911, HTSUS, provides for other printed matter including printed pictures and photographs. This heading includes pictures and photographs printed by lithography. Note 1(d) to chapter 49, HTSUS, states that this chapter does not cover "original engravings, prints or lithographs (heading 9702)...."

Heading 9702, HTSUS, provides for, among other things, original engravings, prints and lithographs. Note 2 to chapter 97, HTSUS, states:

> For the purposes of heading 9702, the expression "*original engravings, prints and lithographs*" means impressions produced directly, in black and white or in color, of one or of several plates wholly executed by hand by the artist, irrespective of the process or of the material employed by him, but not including any mechanical or photomechanical process.

As discussed in the paragraphs that follow, one of the determinative factors in the classification of this merchandise is the way in which the image is transferred, either directly from the plate to the paper, without the use of a mechanical or photomechanical process, as in the case of the lithographs of heading 9702, HTSUS, or indirectly, and with the use of a mechanical or photochemical process, as is the case of the lithographs provided for under heading 4911, HTSUS.

The subject merchandise is not the result of the lithographic process provided for under heading 9702, HTSUS. The prints of heading 9702, HTSUS, are unique in that they are "original prints" produced directly by the artist, with a plate or stone created by him or her. The processing of these prints involves a direct transfer from the stone or plate to the paper by any means other than "mechanical or photomechanical process." As such, although the subject offset printing posters are not lithographs as provided for under heading 9702, HTSUS, this does not in any way preclude their classification as "lithographs" as provided for under a different heading, that is to say, heading 4911, HTSUS.

Subheading 4911.91.20, HTSUSA, provides for lithographs on paper or paperboard which are the result of a lithographic process different from that provided for under heading 9702, HTSUS. Stated another way, the prints of subheading 4911.91.20, HTSUSA, are not produced directly by the artist via use of an original plate or stone, the transfer is a three step process from plate to intermediate blanket to paper, and the use of mechanical or photomechanical process is not excluded. In this case the word "offset" is used as an idiomatic term intended to refer to "lithographic offset process" which indicates an alternate printing process. As the subject merchandise is the result of such a lithographic offset process, it is properly provided for under subheading 4911.91.2020, HTSUSA. *See, e.g.,* Headquarters Rulings Letter (HQ) 962891, and HQ 963605, dated November 16, 1999, and NY 856467, dated September 28, 1990, which classified similar merchandise in subheading 4911.91.2020, HTSUSA.

With respect to the second issue, 19 USC 1625(c)(2) provides that a proposed interpretative ruling or decision which would have the effect of modifying the treatment previously accorded by Customs to substantially identical transaction shall be published in the Customs Bulletin for public comment and be effective 60 days after the date of publication of the final ruling or decision.

While no regulations have been published by Customs with respect to what constitutes a treatment, it is Customs opinion that the answer is dependent upon the facts and circumstances involved and that treatment is personal to each importer. The granting of treatment to one importer does not carry over to another importer of the same merchandise where different facts or circumstances are in-

volved. Each claim must be looked at separately and a determination made under the specific facts and circumstances as to whether or not to grant a claim of treatment.

Under the facts and circumstances of this particular situation as set forth in the facts portion of this decision, it is Customs opinion that a treatment exists. Accordingly, the classification for merchandise which is the subject of this decision imported by you will be allowed under subheading 4911.91.4020, HTSUS, in the quantities and frequency of past importations by you of this merchandise until the effective date of the final publication of this ruling in the Customs Bulletin. Thereafter the merchandise must be entered in accordance with the classification set forth in the final ruling (i.e. subheading 4911.91.2020).

HOLDING:

Other than for the classification and time frame set forth in the above paragraph, the subject merchandise is properly classified in subheading 4911.91.2020, HTSUSA.

If the subject merchandise consists of posters, it is classified in subheading 4911.91.2020, HTSUSA, which provides for other printed matter, including printed pictures and photographs: other: pictures, designs and photographs: printed not over 20 years at time of importation: other: lithographs on paper or paperboard: not over 0.51 mm in thickness: posters. The applicable general column one rate of duty is 6.6 cents/kg.

As the subject merchandise is classified in subheading 4911.91.2020, HTSUSA, and is a product of France, it is subject to the provisions of subheading 9903.08.11, HTSUSA, which makes this merchandise dutiable at the rate of 100 percent *ad valorem*.

The treatment previously accorded by Customs to the merchandise described in this ruling is hereby revoked. In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

JOHN E. ELKINS,
(For John Durant, Director)
Commercial Rulings Division

UNITED STATES CUSTOMS SERVICE

October 4, 2000

Department of the Treasury
Office of the Commissioner of Customs
Washington, D.C.

The following documents of the United States Customs Service, Office of Regulations and Rulings, have been determined to be of sufficient interest to the public and U.S. Customs field offices to merit publication in the Customs Bulletin.

STUART P. SEIDEL
Assistant Commissioner
Office of Regulations and Rulings

19 CFR PART 177

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO TARIFF CLASSIFICATION OF "HEADSTART BOVINE DRIED COLOSTRUM"

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of proposed revocation of a tariff classification ruling letter and the treatment relating to the classification of a product known as "Headstart Bovine Dried Colostrum"

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625 (c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling, and any treatment previously accorded by Customs to substantially identical transactions, concerning the tariff classification under the Harmonized Tariff Schedule of the United States (HTSUS), of a product known as "Headstart Bovine Dried Colostrum". Comments are invited on the correctness of the intended action.

DATE: Comments must be received on or before (30 days from date of publication in the Customs Bulletin).

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulation and Rulings, Attention: Commercial Rulings Division, 1300 Pennsylvania Avenue, N.W., Washington, D.C. 20229. Comments submitted may be inspected at the same address.

FOR FURTHER INFORMATION CONTACT: Norman W. King, General Classification Branch (202) 927-1109.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's respon-

sibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended (19 U.S.C. §1484), the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625 (c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling pertaining to the tariff classification of a product known as "Headstart Bovine Dried Colostrum". Although in this notice Customs is specifically referring to one ruling, New York Ruling Letter (NYRL) B85847 dated June 6, 1997, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to those identified. No further rulings have been found. This notice will cover any rulings on the merchandise which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the HTSUS. Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise issues of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to this notice.

In NYRL B85847 dated June 6, 1997, set forth as Attachment A to this document, Customs held that a product described as "Headstart Bovine Dried Colostrum" was classified in the tariff rate quota provisions of subheadings 0402.21.3000 and 0402.21.50, HTSUS, as milk and cream, concentrated not containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, exceeding 3 percent but not exceeding 35 percent. Customs, pursuant to 19 U.S.C. 1625(c)(1), intends to revoke NYRL B85847, and revoke any other ruling not specifically identified, to reflect the proper classification of the merchandise in subheading 0404.90.70, HTSUS, as other, other natural milk constituents, whether or not containing added sugar or other sweetening matter, not else-

where specified or included, pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964528, Attachment B to this document. Customs also intends to simutaneously issue a prospective ruling for a similar product known as "Whole Bovine Colostrum", as set forth in Attachment C (963684) to this document.

Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. Before taking this action, consideration will be given to any written comments timely received.

Dated: September 27, 2000

MARVIN AMERNICK
(for John Durant, Director
Commercial Rulings Division)

[Attachments]

ATTACHMENT A

NY B85847
June 6, 1997
CLA-2-04:RR:NC:2:231 B85847
Category: Classification
Tariff No.: 0402.21.3000; 0402.21.5000

MR. EUGENE BROWN
BROWN'S FEEDS LTD.
R.R. #1
Clive, Alberta T0C 0Y0
Canada

Re: The tariff classification of dried bovine colostrum from Canada.

DEAR MR. BROWN:

In your letter, dated May 5, 1997, you have requested a tariff classification ruling.

The product is called, "Headstart Bovine Dried Colostrum." It is comprised of spray dried, first and second milking colostrum from multiparous dairy cows. The ingredients are 54.8 percent protein, 19.7 percent fat, 14.8 percent lactose, 5 percent moisture, 0.01 percent sodium benzoate as a preservative, and bovine immunoglobulins (antibodies) G, M, and A. When added to water, it is used to feed newborn calves in order to provide passive transfer of antibodies.

The applicable subheading for "Headstart Bovine Dried Colostrum," if imported in quantities that fall within the limits described in additional U.S. note 8 to chapter 4, will be 0402.21.3000, Harmonized Tariff Schedule of the United States (HTS), which provides for milk and cream, concentrated or containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, exceeding 1.5 percent not containing added sugar or other sweetening matter, of a fat content, by weight, exceeding 3 percent but not exceeding 35 percent, described in additional U.S. note 8 to chapter 4 and entered pursuant to its provisions, in airtight containers. The general rate of duty will be 6.8 cents per kilogram. If the quantitative limits of additional U.S. note 8 to chapter 4 have been reached, the product will be classified in subheading 0402.21.5000, HTS, and will be

dutiable at US $1.189 per kilogram. In addition, products classified in subheading 0402.21.5000, HTS, will be subject to additional duties based on their value, as described in subheadings 9904.04.31 - 9904.04.39, HTS.

An import license, issued to the importer by the United States Department of Agriculture, will be required at the time such merchandise is entered for consumption into the United States.

Questions regarding licensing procedures and applications for licenses to import milk subject to quota should be addressed to:

U.S. Department of Agriculture
Foreign Agricultural Service
Import Policies and Trade Analysis Division
Att: Dairy Import Group, Rm. 5531, So. Bldg.
Washington, DC 20250-1000

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 CFR 177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import specialist Ralph Conte at (212) 466-5759.

Sincerely,

Gwenn Klein Kirschner
Chief, Special Products Branch
National Commodity
Specialist Division

ATTACHMENT B

HQ 964528
CLA-2 RR:CR:GC 964528K
Category: Classification
Tariff No.: 0404.90.7000

MR. EUGENE BROWN
BROWN'S FEEDS LTD.
R.R. # 1
Clive, Alberta T0C 0Y0
Canada

Re: Revocation of New York Ruling Letter (NYRL) B85847; Bovine Dried Colostrum

DEAR MR. BROWN:

In response to your letter dated May 5, 1997, Customs, National Commodity Specialist Division, New York, issued to you NYRL B85847 dated June 6, 1997, which held that a product described as "Headstart Bovine Dried Colostrum" was classified in the tariff rate quota provisions of subheadings 0402.21.30 and 0402.21.50, Harmonized Tariff Schedule of the United States (HTSUS), as milk and cream, concentrated not containing added sugar or other sweetening matter, in powder, granules or other solid forms, of a fat content, by weight, exceeding 3 percent but not exceeding 35 percent. NYRL B85847 no longer reflects the views of the Customs Service. Our current position follows.

Facts:

"Headstart Bovine Dried Colostrum" is described in NYRL B85847 as being comprised of spray dried, first and second milking colostrum from multiparous dairy cows. The ingredients are 54.8% protein, 19.7% fat, 14.8% lactose, 5% moisture, 0.01% sodium benzoate as a preservative, and bovine immunoglobulins (antibodies)

G, M, and A. When added to water, it is used to feed newborn calves in order to provide passive transfer of antibodies.

Issue:

Whether the product as described is a dairy product consisting of natural milk classified in heading 0402 or as a product consisting of natural milk constituents classified in heading 0404, HTSUS.

Law and Analysis:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the remaining GRI's, taken in their appropriate order. Accordingly, we first have to determine whether the articles are classified under GRI 1. We are satisfied that based on the following that the product is classified under GRI 1.

Heading 0402, HTSUS, provides for milk and cream, concentrated or containing added sugar or other sweetening matter. We note that colostrum is different from the product that is commercially marketed as milk. For example, Lincoln M. Lampert, *Modern Dairy Products* (New York; Chemical publishing company, 1975, at page 14) defines colostrum thus: "Colostrum is the secretion of the mammary glands during the first few days of lactation after giving birth. It differs from normal milk in composition, flavor, and odor. The odor is strong and the flavor bitter....Normal composition of the milk occurs about five days after parturition ...Colostrum is very rich in globulins which serve as the carrier of antibodies which protect the suckling animal against disease-producing organisms."

J.M. Frandsen, *Dairy Handbook* and *Dictionary* (Pennsylvania: Nittany Printing and Publishing Company, 1958), at page 457 reiterates Lampert's statement that colostrum differs from milk in composition, flavor, and odor thus: "Colostrum is thick and yellow, has a strong odor, a bitter taste, and contains a very high percentage of globulin.... In two to ten days colostrum milk usually changes to normal milk. Colostrum is believed to be especially rich in antibodies which protect the calf from diseases to which it would otherwise offer little or not resistance." The U.S. Food and Drug Administration, in its standards of identity for milk, articulates the definition of milk thus: "Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows" (21 CFR 131.110(a)).

We conclude that colostrum is not the product that is commonly known and commercially sold as "milk" and therefore is precluded form classification in Heading 0402, HTSUS, which provides for milk and cream, concentrated or containing added sugar or other sweetening matter.

Heading 0404, HTSUS provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included. In our opinion, colostrum is not milk that is commercially sold as milk. It is composed entirely of natural milk constituents and it is not elsewhere specified or included in the tariff. Therefore, it is classified by virtue of GRI 1 in subheading 0404.90.70 (not a tariff rate quota provision) as other, other natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included. See HQ 963684 of this date concerning similar products.

Holding:

The product "Headstart Bovine Dried Colostrum" as described in NYRL B85847 is classified in subheading 0404.90.70 (not a tariff rate quota provision) as other, other natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included.

NYRL B85847 is revoked.

Sincerely,

John Durant, Director
Commercial Rulings Division

ATTACHMENT C

HQ 963684
CLA-2 RR:CR:GC 963684K
Category: Classification
Tariff No.: 0404.90.70

MR. CHRISTIAN EMMANUEL, PRESIDENT
CEMMA INTERNATIONAL INC. AND
MR. DIMITRI FRAEYS DE VEUBEKE
ADVISOR-REGULATORY AFFAIRS
GROUPE LACTEL
4829 avenue Rosedale
Montreal (Quebec)
Canada H4V 2H3

Re: Whole Bovine Colostrum

DEAR MESSRS. EMMAUNUEL AND FRAEYS DE YEUBEKE:

Your letters of September 28 and November 9, 1999, on behalf of Le Groupe Lactel, Boucherville, Quebec, requesting a classification ruling for product # 100243, whole bovine colostrum, under the Harmonized Tariff Schedule of the United States (HTSUS), were referred by the Director, Customs National Commodity Specialist Division, N.Y, to Customs Headquarters for a direct response. You suggest that the product is classified as extracts of glands or other organs or their secretions, for organotherapeutic uses, in subheading 3001.20.00, HTSUS. Our decision follows.

Facts:

The merchandise, #100234, is described as whole bovine colostrum from first and second milking, in the form of spray dried powder, for human consumption. It will be imported into the United States from Canada and/or the European Union, and it will be sold to health food manufacturers as a natural, dietary supplement in 20-25 kilogram bags. The product will be used as an active ingredient in the manufacture of tablets and/or capsules of bovine colostrum. The whole bovine colostrum from first and second milking contains 19% fat, and it is rich in immunoglobulin G (IgG). It contains by weight 61.5% nitrogenous matter, 22% IgG, 19% fat, 10% lactose, 5% moisture, and 4.5% ash. First milking colostrum contains, on a dry basis, 44% soluble protein (of which 26% is globulin), 21% casein, 20% fat, 10% lactose, and 5% ash; it contains, on an "as is" basis, 42% soluble protein (of which 25& is globulin), 20% casein, 19% fat, 10% lactose, and 5% ash.

Issue:

Whether the product as described is a dairy product consisting of natural milk constituents classified as other dairy products not elsewhere specified or included, in subheading 0404.90.70, HTSUS.

Law and Analysis:

The classification of imported merchandise under the HTSUS is governed by the principles set forth in the General Rules of Interpretation (GRI). GRI 1 requires that classification be determined first according to the terms of the headings of the tariff schedule and any relative section and chapter notes and, unless otherwise required, according to the remaining GRI's, taken in their appropriate order. Accordingly, we first have to determine whether the articles are classified under GRI 1. We are satisfied that based on the following that the product is classified under GRI 1.

Subheading 3001.20.00, HTSUS, provides for extracts of glands or other organs or their secretions, for organotherapeutic uses. This is a "use" provision. Additional U.S. Rules of Interpretation 1. (a), HTSUS, defines a "use" provision as "a tariff classification controlled by use (other than actual use) is to be determined in accordance with the use in the United States at, or immediately prior to, the date of importation, of goods of that class or kind to which the imported goods belong, and the controlling use is the principal use". In Headquarters Ruling Decision 957738, dated July 19, 1996, Customs noted that Webster's *Third New International Dictio-*

nary, unabridged (1968) defines the term "organotherapeutic" as "of, relating to, or used in organotherapy". The term "organotherapy" is defined as "a treatment of disease by the administration of animal organs or of their extracts". Other dictionaries contain similar definitions. You indicate that the subject colostrum will be used as a natural food supplement with general beneficial properties. There is no indication that the product will be used for treatment of a specific disease. Accordingly, the product is precluded from classification in subheading 3001.20.00, HTSUS.

Heading 0402, HTSUS, provides for milk and cream, concentrated or containing added sugar or other sweetening matter. We note that colostrum is different from the product that is commercially marketed as milk. For example, Lincoln M. Lampert, *Modern Dairy Products* (New York; Chemical publishing company, 1975, at page 14) defines colostrum thus: "Colostrum is the secretion of the mammary glands during the first few days of lactation after giving birth. It differs from normal milk in composition, flavor, and odor. The odor is strong and the flavor bitter....Normal composition of the milk occurs about five days after parturition ...Colostrum is very rich in globulins which serve as the carrier of antibodies which protect the suckling animal against disease-producing organisms."

J.M. Frandsen, *Dairy Handbook* and *Dictionary* (Pennsylvania: Nittany Printing and Publishing Company, 1958), at page 457 reiterates Lampert's statement that colostrum differs from milk in composition, flavor, and odor thus: "Colostrum is thick and yellow, has a strong odor, a bitter taste, and contains a very high percentage of globulin.... In two to ten days colostrum milk usually changes to normal milk. Colostrum is believed to be especially rich in antibodies which protect the calf from diseases to which it would otherwise offer little or not resistance." The U.S. Food and Drug Administration, in its standards of identity for milk, articulates the definition of milk thus: "Milk is the lacteal secretion, practically free from colostrum, obtained by the complete milking of one or more healthy cows" (21 CFR 131.110(a)).

We conclude that colostrum is not the product that is commonly known and commercially sold as "milk" and therefore is precluded form classification in Heading 0402, HTSUS, which provides for milk and cream, concentrated or containing added sugar or other sweetening matter.

Heading 0404, HTSUS provides for whey, whether or not concentrated or containing added sugar or other sweetening matter; products consisting of natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included. In our opinion, colostrum is not milk that is commercially sold as milk. It is composed entirely of natural milk constituents and it is not elsewhere specified or included in the tariff. Therefore, it is classified under GRI 1 in subheading 0404.90.70, as other, other natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included.

Holding:

The merchandise, # 100234, described above as whole bovine colostrum from first and second milking, in the form of spray dried powder, for human consumption, is classified by virtue of GRI 1 in subheading 0404.90.70, HTSUS, as other, other natural milk constituents, whether or not containing added sugar or other sweetening matter, not elsewhere specified or included.

Sincerely,

John Durant, Director
Commercial Rulings Division

PROPOSED REVOCATION OF RULING LETTER AND TREATMENT RELATING TO THE CLASSIFICATION OF DOLL TRUNK WITH OUTER SURFACE OF TEXTILE MATERIALS

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of proposed revocation of a tariff classification ruling and revocation of treatment relating to the classification of doll trunk (style #130311) with outer surface of textile materials.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs intends to revoke a ruling letter relating to the tariff classification of a doll trunk (style #130311) with outer surface of textile materials under the Harmonized Tariff Schedule of the United States (HTSUS), and to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Comments are invited on the correctness of the proposed action.

DATE: Comments must be received on or before (30 days from the date of publication of notice in the Customs Bulletin).

ADDRESS: Written comments (preferably in triplicate) are to be addressed to U.S. Customs Service, Office of Regulations and Rulings, Attention: Textile Classification Branch, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229. Comments submitted may be inspected at the Commercial Rulings Division, Office of Regulations and Rulings, 1300 Pennsylvania Avenue N.W., Washington, D.C. 20229.

FOR FURTHER INFORMATION CONTACT: Ann Segura Minardi, Textile Branch, at (202) 927-2380.

SUPPLEMENTARY INFORMATION:

Background

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub.L. 103-182, 107 Stat. 2057), (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended and related laws. Two new concepts which emerge from the law are "informed compliance" and "shared responsibility." These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition,

both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. section 1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

Pursuant to section 625(c)(1), Tariff Act of 1930 (19 U.S.C. 1625(c)(1)), as amended by section 623 of Title VI, this notice advises interested parties that Customs intends to revoke a ruling letter pertaining to the tariff classification of a doll trunk. Although in this notice, Customs is specifically referring to one ruling, New York Ruling (NY) F86850, dated May 12, 2000, this notice covers any rulings on this merchandise which may exist but have not been specifically identified. Customs has undertaken reasonable efforts to search existing databases for rulings in addition to the one identified. No further rulings have been found. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the merchandise subject to this notice, should advise Customs during this period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930 (19 U.S.C. 1625(c)(2)), as amended by section 623 of Title VI, Customs intends to revoke any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, be the result of the importer's reliance on a ruling issued to a third party. Customs personnel applying a ruling of a third party to importations of the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States (HTSUS). Any person involved in substantially identical transactions should advise Customs during this notice period. An importer's failure to advise Customs of substantially identical transactions or of a specific ruling not identified in this notice, may raise the rebuttable presumption of lack of reasonable care on the part of the importer or his agents for importations of merchandise subsequent to the effective date of the final decision of this notice.

In NY F86850, dated May 12, 2000, Customs ruled that a doll trunk manufactured of a rigid base material wholly covered with 100 percent polyester fabric is classifiable in subheading 4202.12.2020, HTSUS, which provides for trunks with a covering of plastic. This ruling letter is set forth as "Attachment A" to this document. Since the issuance of this ruling, Customs has reviewed the classification of this item and has determined that the cited ruling is in error. Inasmuch as this item is wholly covered with polyester material, the correct tariff classification is subheading 4202.12.8070, HTSUS, which provides for "Trunks ...and similar containers: With outer surface of plastics or of textile materials: With outer surface of textile materials: Other, Other: Other: Of man-made fibers."

Pursuant to 19 U.S.C. 1625(c)(1), Customs intends to revoke NY

F86850 dated May 12, 2000, and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Proposed Headquarters Ruling Letter (HQ) 964480 (see "Attachment B" to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs intends to revoke any treatment previously accorded by the Customs Service to substantially identical merchandise. Before taking this action consideration will be given to any written comments timely received.

Dated: September 28, 2000

JOHN E. ELKINS
(for John Durant, Director
Commercial Rulings Division)

[Attachments]

ATTACHMENT A

May 12, 2000
NY F86850
CLA-2-42:RR:NC:341:F86850
CATEGORY: Classification
TARIFF NO.: 4202.12.2020

MS. JUDY PICCIRILLO
TOYS "R" US
461 From Road
Paramus, NJ 07652

Re: The tariff classification of a doll's trunk from China.

DEAR MS. PICCIRILLO:

In your letter dated May 2nd, 2000 you requested a classification ruling.

The sample submitted is item 130311, "Girls on the Go Doll Trunk", is a trunk manufactured of a rigid base material wholly covered with 100% polyester fabric. It has a luggage handle grip on the top and luggage type lock closures. The interior is fitted with two drawers, two shelves, a hanger bracket with a large open storage spare for the doll or clothes. The trunk is packaged in a retail carton which is printed "take your doll and her wardrobe any where you go". It is substantially constructed to provide storage, protection, organization and portability for a doll and its accessories.

The applicable subheading for #130311 will be 4202.12.2020, Harmonized Tariff Schedule of the United States (HTS), which provides for trunks, suitcases, vanity cases ...trunks, suitcases, vanity cases and similar containers. The duty rate will be 20% ad valorem.

The designated textile and apparel categories and their quota and visa status are the result of international agreements that are subject to frequent renegotiations and changes. To obtain the most current information, we suggest that you check, close to the time of shipment, the *U.S. Customs Service Textile Status Report*, an internal issuance of the U.S. Customs Service, which is available at the Customs Web site at www.customs.gov. In addition, the designated textile and apparel categories may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected and should also be verified at the time of shipment.

This ruling is being issued under the provisions of Part 177 of the Customs Regulations (19 C.F.R.-177).

A copy of the ruling or the control number indicated above should be provided with the entry documents filed at the time this merchandise is imported. If you have any questions regarding the ruling, contact National Import Specialist Kevin Gorman at 212-637-7091.

Sincerely,

Robert B. Swierupski
Director,
National Commodity
Specialist Division

ATTACHMENT B

HQ 964480
CLA-2 RR:CR:TE 964480 ASM
Category: Classification
Tariff No.: 4202.12.8070

MS. JUDY PICCIRILLO
TOYS "R" US
461 From Road
Paramus, NJ 07652

Re: Revocation of NY F86850; Classification of a doll's trunk with outer surface of textile material

DEAR MS. PICCIRILLO:

This is in regard to NY F86850 issued to you on May 12, 2000, by this office in reply to your letter of May 2, 2000, in which you requested a tariff classification ruling of a doll's trunk with outer surface of textile material (style # 130311). We have reviewed this ruling and determined that the classification provided for this merchandise is incorrect. This ruling revokes NY F86850 by providing the correct classification for the doll trunk (style # 130311).

Facts:

The subject goods, identified as a "Girls on the Go Doll Trunk" (style # 130311), consists of a trunk manufactured of a rigid base material wholly covered with 100 percent polyester fabric. The trunk has a luggage handle grip on the top and has luggage type lock closures. The interior is fitted with two drawers, two shelves, and a hanger bracket with a large open storage space for the doll or clothes.

In NY F86850, Customs found the subject goods classifiable within subheading 4202.12.2020, Harmonized Tariff Schedule of the United States. This provision provides for "Trunks, suitcases, vanity cases... Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers:

With outer surface of plastics or of textile materials: With outer surface of plastics; Structured, rigid on all sides: Trunks, suitcases, vanity cases, and similar containers." The general column one duty rate is 20 percent *ad valorem.*

Issue:

What is the proper classification for the merchandise?

Law and Analysis:

Classification under the Harmonized Tariff Schedule of the United States Annotated (HTSUSA) is made in accordance with the General Rules of Interpretation (GRI). GRI 1 provides that the classification of goods shall be determined according to the terms of the headings of the tariff schedule and any relative Section or Chapter Notes. In the event that the goods cannot be classified solely on the basis

of GRI 1, and if the heading and legal notes do not otherwise require, the remaining GRI may then be applied. The Explanatory Notes (EN) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUSA by offering guidance in understanding the scope of the headings and GRI. The EN, although not dispositive, are used to determine the proper interpretation of the HTSUSA by providing a commentary on the scope of each heading of the HTSUSA. See, T.D. 89-80, 54 Fed. Reg. 35127, 35128 (August 23, 1989).

In NY F86850, dated May 12, 2000, Customs ruled that a doll trunk manufactured of a rigid base material wholly covered with 100 percent polyester fabric is classifiable in subheading 4202.12.2020, HTSUSA, which provides for trunks with a covering of plastic. Since the issuance of this ruling, Customs has reviewed the classification of this item and has determined that the cited ruling is in error. Inasmuch as this item is wholly covered with polyester material, the correct tariff classification is subheading 4202.12.8070, HTSUSA, which provides for "Trunks ...and similar containers: With outer surface of plastics or of textile materials: With outer surface of textile materials: Other, Other: Other: Of man-made fibers."

Holding:

NY F86850, dated May 12, 2000, is hereby revoked.

The subject merchandise is correctly classified in subeading 4202.12.8070, HTSUSA, which provides for, "Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels, spectacle cases, binocular cases, camera cases, musical instrument cases, gun cases, holsters and similar containers; traveling bags, toiletry bags, knapsacks and backpacks, handbags, shopping bags, wallets, purses, sports bags, bottle cases, jewelry boxes, powder cases, cutlery cases and similar containers, of leather or of composition leather, of sheeting of plastics, of textile materials, of vulcanized fiber, or of paperboard, or wholly or mainly covered with such materials or with paper: Trunks, suitcases, vanity cases, attache cases, briefcases, school satchels and similar containers: With outer surface of plastics or of textile materials: With outer surface of textile materials: Other; Other: Other: Of man-made fibers." The general column one duty rate is 18.6 percent *ad valorem*. The textile quota category is 670.

The designated textile and apparel category may be subdivided into parts. If so, visa and quota requirements applicable to the subject merchandise may be affected. Since part categories are the result of international bilateral agreements which are subject to frequent renegotiations and changes, to obtain the most current information available, we suggest you check, close to the time of shipment, the *Status on Current Import Quotas (Restraint Levels)*, an issuance of the U.S. Customs Service, which is updated weekly and is available at the local Customs office.

Due to the changeable nature of the statistical annotation (the ninth and tenth digits of the classification) and the restraint (quota/visa) categories applicable to textile merchandise, you should contact the local Customs office prior to importation of this merchandise to determine the current status of any import restraints or requirements.

Sincerely,

John Durant, Director
Commercial Rulings Division

REVOCATION OF RULING LETTER AND TREATMENT RELATING TO CLASSIFICATION OF "BIG MOUTH BILLY BASS" SINGING FISH

AGENCY: U.S. Customs Service, Department of the Treasury

ACTION: Notice of revocation of tariff classification ruling letter and treatment relating to the classification of a "Big Mouth Billy Bass" singing fish.

SUMMARY: Pursuant to section 625(c), Tariff Act of 1930 (19 U.S.C. 1625(c)), as amended by section 623 of Title VI (Customs Modernization) of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057), this notice advises interested parties that Customs is revoking a ruling letter pertaining to the classification, under the Harmonized Tariff Schedule of the United States (HTSUS), of a "Big Mouth Billy Bass" singing fish and any treatment previously accorded by the Customs Service to substantially identical transactions. Notice of the proposed revocation was published in the *Customs Bulletin* of August 30, 2000, Vol. 34, No. 35. Two comments were received neither of which opposed the revocation.

EFFECTIVE DATE: Merchandise entered or withdrawn from warehouse for consumption on or after (60 days after publication in the *Customs Bulletin*).

FOR FURTHER INFORMATION CONTACT: John G. Black, General Classification Branch (202) 927-1317.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On December 8, 1993, Title VI, (Customs Modernization), of the North American Free Trade Agreement Implementation Act (Pub. L. 103-182, 107 Stat. 2057) (hereinafter "Title VI"), became effective. Title VI amended many sections of the Tariff Act of 1930, as amended, and related laws. Two new concepts which emerge from the law are **"informed compliance"** and **"shared responsibility."** These concepts are premised on the idea that in order to maximize voluntary compliance with Customs laws and regulations, the trade community needs to be clearly and completely informed of its legal obligations. Accordingly, the law imposes a greater obligation on Customs to provide the public with improved information concerning the trade community's responsibilities and rights under the Customs and related laws. In addition, both the trade and Customs share responsibility in carrying out import requirements. For example, under section 484 of the Tariff Act of 1930, as amended, (19 U.S.C. §1484) the importer of record is responsible for using reasonable care to enter, classify and value imported merchandise, and provide any other information necessary to enable Customs to properly assess duties, collect accurate statistics and determine whether any other applicable legal requirement is met.

In New York ruling (NY) F82965, dated March 3, 2000, Customs ruled that a "Big Mouth Billy Bass" singing fish was classified in sub-

heading 8943.89.9695, HTSUS, which provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, parts thereof: Other machines and apparatus: Other: Other: Other, Other." Since the issuance of that ruling, Customs has had a chance to reconsider the classification of this merchandise based on the information as to use provided by the importer and from other sources and has determined that the ruling is in error. We have determined that this "Big Mouth Billy Bass" singing fish is within the class of practical joke articles and is properly classified in subheading 9505.90.2000, HTSUS, as "Festive, carnival or other entertainment articles, including magic tricks and practical joke articles; parts and accessories thereof: Other: Magic tricks and practical joke articles; parts and accessories thereof."

Customs, pursuant to 19 U.S.C. 1625(c)(1), is revoking NY F82965 and any other ruling not specifically identified, to reflect the proper classification of the merchandise pursuant to the analysis set forth in Headquarters Ruling Letter (HQ) 964171 (see "Attachment " to this document). Additionally, pursuant to 19 U.S.C. 1625(c)(2), Customs is revoking any treatment previously accorded by the Customs Service to substantially identical transactions.

As stated in the proposed notice, this revocation will cover any rulings on this issue which may exist but have not been specifically identified. Any party who has received an interpretive ruling or decision (i.e., ruling letter, internal advice memorandum or decision or protest review decision) on the issue subject to this notice, should have advised Customs during the notice period. Similarly, pursuant to section 625(c)(2), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)(2)), Customs is revoking any treatment previously accorded by Customs to substantially identical transactions. This treatment may, among other reasons, have been the result of the importer's reliance on a ruling issued to a third party, Customs personnel applying a ruling of a third party to importations involving the same or similar merchandise, or the importer's or Customs previous interpretation of the Harmonized Tariff Schedule of the United States. Any person involved in substantially identical transactions should have advised Customs during the notice period. An importer's reliance on a treatment of substantially identical transactions or on a specific ruling concerning the merchandise covered by this notice which was not identified in this notice may raise the rebuttable presumption of lack of reasonable care on the part of the importer or its agents for importations subsequent to the effective date of this final decision.

Dated: October 2, 2000

MARVIN AMERNICK
(for John Durant, Director
Commercial Rulings Division)

[Attachments]

HQ 964171
October 2, 2000
CLA-2 RR:CR:GC 964171 JGB
Category: Classification
Tariff No.: 9505.90.20

MR. ROBERT T. GIVENS
GIVENS AND ASSOCIATES, PLLC
950 Echo Lane, Suite 360
Houston, TX 77024-2788

Re: "Big Mouth Billy Bass"; Not Toys; Not Other Electrical Machine and Apparatus; Practical Joke Article

DEAR MR. GIVENS:

This letter is in response to your request of March 30, 2000, on behalf of your client, Gemmy Industries Corp., requesting reconsideration of New York Ruling Letter (NY) F82965, issued to DJS International Services, Inc., on March 3, 2000, on behalf of your client, concerning the classification under the Harmonized Tariff Schedule of the United States (HTSUS), of an article marketed as "Big Mouth Billy Bass." A sample was submitted with your request.

This letter is to inform you that F82965 no longer reflects the view of the Customs Service concerning the classification of the "Big Mouth Billy Bass" singing fish and that the following reflects our position for this article.

Pursuant to section 625(c), Tariff Act of 1930, as amended (19 U.S.C. 1625(c)), notice of the proposed revocation of was published on August 30, 2000, in the *Customs Bulletin*, Volume 34, Number 35. Two comments were received neither of which opposed the revocation.

Facts:

The importer states that the sample is designed to look like a real fish mounted on a trophy board. The fish, when activated, moves and sings its two alternative songs in "synchro-motion." As a song begins, the fish wags its tail in time with the music. As the song progresses, the fish raises its head from the mounting, faces its viewers and moves its mouth in almost perfect synchrony with the song and music, such that it appears that the fish is actually singing the songs, albeit remaining attached in part to its mounting. The singing is activated manually by a red button on the plaque below the fish, by flipping a switch on the back, or by use of a motion sensor. The fish, measuring about 13 inches in length and about 5½ inches in height is constructed of a natural-looking plastic material colored to look like a real bass. The brown trophy board, measuring about 9 inches by 13 inches, upon which the fish is mounted is colored to look like wood.

The article is powered by batteries or, in the alternative, a by 6-volt DC, 120 V A/C adapter which is provided with the unit and can be plugged into the adapter jack located on the lower outside corner of the trophy board. The plaque is to be hung on the wall or placed on a level surface using the built-in easel as a stand. In use, the owner would invite an unaware person to view his fishing trophy. If the button is to be used, while the viewer approaches the fish, the owner would press the button to activate the article. In the alternative, the owner might direct someone to walk over to the wall to see the trophy fish and as the person approaches range of the motion sensor, the fish will begin its antics. While the user is expected to be startled, surprised, mystified, or amused by the article, those sentiments would not be likely at subsequent performances of the fish. The amusement appears to be limited to having someone else be surprised by the fish and not by watching it over and over again.

The article contains an electric motor to move the fish and an electronic chip and related electronic sound apparatus that contains and amplifies the songs "Don't Worry Be Happy" and "Take Me to the River" sung by the fish.

Issue:

Whether the "Big Mouth Billy Bass" singing fish is classifiable within heading 9503 as toys; in heading 9505 as practical joke articles; in heading 8543 as other electrical machines and apparatus; or elsewhere in the HTSUS.

Law and Analysis:

The General Rules of Interpretation (GRIs) taken in their appropriate order provide a framework for classification of merchandise under the HTSUS. Most imported goods are classified by application of GRI 1, that is, according to the terms of the headings of the tariff schedule and any relative section or chapter notes. In the event that the goods cannot be classified solely on the basis of GRI 1, and if the headings and legal notes do not otherwise require, the remaining GRIs may then be applied. The Explanatory Notes (ENs) to the Harmonized Commodity Description and Coding System, which represent the official interpretation of the tariff at the international level, facilitate classification under the HTSUS by offering guidance in understanding the scope of the headings and GRIs.

Customs ruling of March 3, 2000, NY F82965, classified the article in subheading 8543.89.9695, HTSUS. This subheading provides for "Electrical machines and apparatus, having individual functions, not specified or included elsewhere in this chapter, parts thereof: Other machines and apparatus: Other: Other: Other, Other." Note 1(p) to Section XVI, which includes Chapter 85, HTSUS, which, in turn, covers heading 8543, provides that this section does not cover articles of Chapter 95. Thus, if the Big Mouth Billy Bass is classifiable under headings 9503 or 9505, then note 1(p) to Section XVI precludes classification under heading 8543 and necessitates classification under Chapter 95.

Two headings worthy of additional consideration in this case are heading 9503 providing for toys and heading 9505 providing for, among other things, practical joke articles. With regard to heading 9503, the ENs to Chapter 95 indicate that "this chapter covers toys of all kinds whether designed for amusement of children or adults." The ENs to heading 9503 indicate that among other toys, the heading covers toys representing animals or non-human creatures even if possessing predominantly human physical characteristics (e.g.,angels, robots, devils, monsters). It has been Customs position that the amusement requirement means that toys should be designed and used principally for amusement. See Additional U.S. Rule of Interpretation 1(a), HTSUSA. Customs defines principal use as that use which exceeds each other single use of the article. Although there is an element of amusement in this article, it also functions to trick or surprise unsuspecting individuals, in other words, to put the individual at a humorous disadvantage. In this case, since the article will not be principally used as a toy, it is not classifiable within heading 9503. In our opinion, the article does not provide the manipulative play value or frivolous entertainment characteristic of toys. While toys are usually played with at some length, this article loses its surprise value after the first use.

Heading 9505, HTSUS, provides, *inter alia*, for practical joke articles. The EN to 9505 indicates that the heading includes:

(B) Conjuring tricks and novelty jokes, e.g., packs of cards, tables, screens and containers, specially designed for the performance of conjuring tricks; novelty jokes such as sneezing powder, surprise sweets, water-jet button-holes and "Japanese flowers."

In determining whether merchandise qualifies as a practical joke article, Customs has utilized the standard articulated in *Parksmith Corporation v. United States*, 67 Cust. Ct. 405, 408 C.D. 4304 (1970). In that decision, the court reviewed several dictionary and court case definitions of the term "practical joke," determining that a practical joke article is one which causes humor by "somehow placing an individual at a disadvantage through a trick or prank."

Accordingly, in Headquarters Rulings Letters (HQ) 953187, issued August 5, 1993; 953188, issued May 18, 1993; and 089529, issued October 1, 1991, rubber squirt figures which when squeezed emitted water from the figure's mouth and Weepy the Wee Wee consisting of a figure which, when his pants were pulled down, would squirt water out from a hole in the front pelvic area, were classified as practical joke articles. In these decisions, Customs maintained that the merchandise would surprise and/or trick an individual, placing them at a humorous disadvantage. It is our opinion that the subject merchandise, also serves to surprise and/or trick an individual and place one at a humorous disadvantage. Pursuant to the applicable EN and the definition articulated in the *Parksmith* case, the Big Mouth Billy Bass singing fish qualifies as a practical joke article and is classified in Heading 9505, HTSUS.

Holding:

NY F82965 is revoked.

The "Big Mouth Billy Bass" singing fish is properly classified in subheading 9505.90.20, HTSUS, the provision for festive, carnival or other entertainment articles, other, magic tricks and practical joke articles.

In accordance with 19 U.S.C. 1625(c), this ruling will become effective 60 days after its publication in the *Customs Bulletin*.

Sincerely,

MARVIN AMERNICK
(for John Durant, Director
Commercial Rulings Division)

SECTION 1592 PENALTY COLLECTIONS — FIRST HALF OF CY 2000

AGENCY: U.S. Customs Service, Department of the Treasury.

SUMMARY: This notice sets forth the section 1592 penalty collections from January 1, 2000, through June 30, 2000.

FOR FURTHER INFORMATION CONTACT: Gina D'Onofrio, Penalties Branch, Office of Regulations and Rulings, (202) 927-2272.

SUPPLEMENTARY INFORMATION:

BACKGROUND

Title 19, Code of Federal Regulations, section 103.32 provides, in part, as follows:

Except as otherwise provided in these regulations ... port directors and other Customs officers shall refrain from disclosing facts concerning seizures, investigations, and other pending cases until Customs actions is completed. *After the penalty proceeding is closed by payment of the claim amount, or judicial action, the identity of the violator, the amount of penalty assessed, loss of revenue, mitigated amount (if applicable), and the amount of money paid may be disclosed to the public by the appropriate director."* (Emphasis added.)

Thus, in section 103.32, Customs has expressed its policy to favor disclosure of certain information from closed penalty cases upon request.

Title 19, United States Code, section 1592, which provides for the assessment of monetary penalties for violations relating to importation or introduction of goods into the United States by means of material false statements, acts, or omissions, committed as a result of either fraud, gross negligence or negligence, is the primary civil enforcement statute of the Customs Service. As such, section 1592 is the primary tool to ensure compliance with Customs' commercial laws.

In light of the above and in consideration of the numerous requests Customs has received over the years for information relating to 1592

penalties, Customs believes that the public interest will be better served by affirmatively disclosing most of the information identified in section 103.32 of the Customs Regulations for closed section 1592 cases resulting in collections. This document, therefore, reflects a Customs initiative to report this data without request, starting with the first six months of the year 2000. It is intended that a similar report be published in early 2001, for the section 1592 penalty collections in the second half of year 2000 and continuing semi-annually thereafter.

At the time this report was originally printed, assessed penalty amounts were not reflected in the Penalty-Amounts column in some cases. This was due to an error with the system at the time the violation cases were input. However, the assessed penalty amounts for these penalties, as reflected below, have been researched and input manually in most cases. At this time, we are in the process of implementing changes to our system to avoid this occurrence in future reports and to obtain an accurate penalty amount grand total.

Date: October 2, 2000

Sandra L. Bell
Director, International Trade
Compliance Division

05 JUL 00 SECTION 1592 PENALTIES PAGE 1

VIOLATOR-NAME	VIOLATION-DTE	CASE-CLOSED-DTE	CITATION	PENALTY-ASSESSED	TOT-COLLECTED	FPF-CASE-NUMBER
TAIWAN MACHINERY TRAD	19841003	20000222	19USC1592	2085946.80	4768.65	1985110105000501
NATIONAL TEL-TRONICS	19850401	20000215	19USC1592	1430257.00	9393.50	1990410602000001
WESTLAND CHEESE USA,I	19860903	20000317	19USC1592	6060650.85	27000.00	1991100102217901
VISIONEERING INTERNAT	19870517	20000202	19USC1592	222229.00	14550.00	1991380102249901
ALUMINUM CO. OF AMERI	19900216	20000426	19USC1592	33316.70	5191.72	1993130302014201
TURCHIANO	19930329	20000203	19USC1592	23907.00	720.00	1993390100068001
WINFORD	19931217	20000322	19USC1592	19085.00	1940.00	1995190402000501
WORLD TRIM COMPANY DB	19910919	20000426	19USC1592	239643.78	15715.37	1995272002084001
MINNESOTA MINING & MF	19930810	20000517	19USC1592	275276.68	105000.00	1995350102009201
ZENITH ELECTRONICS CO	19900701	20000526	19USC1592	5000.00	190440.00	1995390102126301
MAN GHH CORPORATION	19900319	20000414	19USC1592	264009.73	264009.73	1995410102018101
WESTERN EQUITIES LIMI	19950417	20000113	19USC1592	2835000.00	25000.00	1995520102049501
OUTERSTUFF INC.	19921230	20000322	19USC1592	39900.00	110292.65	1996100102013801
PETROLEOS MEXICANOS	19951026	20000531	19USC1592	1700.00	425.00	1996230502015201
LEE	19940112	20000330	19USC1592	225426.00	46840.00	1996280902121401
MEGATRADEENTERPRISE	19940321	20000503	19USC1592	2209.00	1104.00	1996280902121601
PRANGE WAY INC	19910306	20000516	19USC1592	14344.00	1515.86	1996370102000301
DANA CORPORATION	19960719	20000427	19USC1592	39833.68	70534.56	1996380102389001
SHORE	19951220	20000516	19USC1592	500.00	500.00	1996380200003201
SWISS ARMY BRANDS, IN	19940101	20000426	19USC1592	12153.93	12153.93	1997040100066001
SONG	19950911	20000512	19USC1592	719390.80	264267.03	1997100100050001
W P MACHINERY	19961204	20000307	19USC1592	800.00	100.00	1997230300020601
BURLINGTON COAT FACTO	19950418	20000616	19USC1592	908764.57	10000.00	1997240200258501
BANDAI AMERICA INC	19940725	20000626	19USC1592	—	801300.21	1997260400006901
JC DEVELOPMENT/CERMAR	19870915	20000208	19USC1592	871722.76	50000.00	1997270400232401
SAMSONS TRUCKING	19970622	20000127	19USC1592	1000.00	285.74	1997340100066901
SAMPSONS TRUCKING	19970818	20000127	19USC1592	1000.00	285.71	1997340100069301
DAY & ROSS INC	19970815	20000217	19USC1592	1000.00	1000.00	1997340100070701
SAMSONS TRUCKING	19970920	20000127	19USC1592	1000.00	285.71	1997340100079301
DAY & ROSS INC	19970901	20000217	19USC1592	1000.00	1000.00	1997340100079901
MINNESOTA MINING & MA	19921230	20000628	19USC1592	55838.44	13664.97	1997350100019101
HOURIET ORGANIC PRODU	19980303	20000225	19USC1592	445.00	92.67	1998021230001601
PHARMLINE INC.	19950201	20000208	19USC1592	0.00	650000.00	1998100130001301
LINATEX CORPORATION O	19940101	20000315	19USC1592	283978.00	50000.00	1998200230003501
KEY PLASTICS DE MEXIC	19971008	20000216	19USC1592	2168.00	491.50	1998240230000601
MAJESCO SALES INC.	19980820	20000524	19USC1592	1259.80	200.00	1998240230022601
FC FELHABER & CO INC	19980112	20000511	19USC1592	665.00	166.25	1998240830000201
RAY INTERNATIONAL TRA	19970724	20000211	19USC1592	7000.00	156.00	1998280930010901
SEH AMERICA	19971116	20000612	19USC1592	28777.00	14388.31	1998290430005001
MICRON TECHNOLOGY	19970326	20000525	19USC1592	34559.21	34559.21	1998300130052701
FINNING LTD	19950915	20000411	19USC1592	195814.76	195814.76	1998300430002401

VIOLATOR-NAME	VIOLATION-DTE	CASE-CLOSED-DTE	CITATION	PENALTY-ASSESSED	TOT-COLLECTED	FPF-CASE-NUMBER
RON'S LEIS, INC.	19950801	20000209	19USC1592	547122.00	50962.00	19983201300001O1
CHINEN	19950801	20000209	19USC1592	547122.00	50962.00	19983201300002O1
DH QUILT COLLECTIONS	19951121	20000313	19USC1592	13077.00	500.00	19983201300043O1
SAMSONS TRUCKING	19970928	20000127	19USC1592	1000.00	285.71	19983401300002O1
SAMSONS TRUCKING	19970918	20000127	19USC1592	1000.00	285.71	19983401300010O1
SAMSONS TRUCKING	19980413	20000127	19USC1592	1000.00	285.71	19983401300287O1
SAMSONS TRUCKING	19980510	20000127	19USC1592	1000.00	285.71	19983401300289O1
AMERICAN BUMPER & MFG	19920801	20000225	19USC1592	28034.51	28034.51	19983801300019O1
TIMBERJACK	19930101	20000223	19USC1592	362884.88	362884.88	19983801300058O1
HONDA OF AMERICA MFG.	19930101	20000614	19USC1592	123868.98	123868.98	19983801300212O1
HALLMARK CARDS, INC.	19930601	20000525	19USC1592	7984.21	7984.21	19983801300213O1
FORD MOTOR COMPANY	19960101	20000201	19USC1592	1492.53	1492.53	19983801300287O1
KG SPECIALTY STEEL IN	19961210	20000107	19USC1592	—	133694.56	19983901300010O1
ANDIS COMPANY	19931201	20000510	19USC1592	6875.00	6875.00	19983901300063O1
MOTOROLA - CELLULAR I	19930401	20000530	19USC1592	98354.49	98354.49	19983901300068O1
NSK CORPORATION	19930101	20000118	19USC1592	—	6521.94	19983901300089O1
PICKER INTERNATIONAL,	19950501	20000124	19USC1592	7724.80	724.80	19984701300201O1
ELLIOTT	19990622	20000121	19USC1592	2000.00	2000.00	19990115300015O1
SARGENT TRUCKING INC.	19990805	20000110	19USC1592	2000.00	2000.00	19990115300023O1
WESTINGHOUSE ELECTRIC	19980810	20000211	19USC1592	—	10649.64	19990401300047O1
MERCHANTS IMPORTING I	19920227	20000509	19USC1592	4847.57	4847.57	19990502300001O1
APPLIED INNOVATIONS I	19980127	20000601	19USC1592	43128.28	26955.17	19990901300161O1
RAYMOND GEDDES & CO.,	19970808	20000202	19USC1592	0.00	20000.00	19991303300052O1
TITAN STEEL	19970205	20000627	19USC1592	10000.00	10000.00	19991303300109O1
EURO-COMPOSITES	19950918	20000626	19USC1592	26520.00	26520.00	19991303300110O1
LAND ROVER	19950101	20000413	19USC1592	14196.70	14196.70	19991303300113O1
SCHRADER BRIDGPORT IN	19980407	20000204	19USC1592	71061.77	35531.00	19991512300010O1
AVESTA SHEFFFIELD NAD	19961101	20000512	19USC1592	105587.13	105587.13	19991601300490O1
TEMIC TELEFUNKEN MICR	19970401	20000118	19USC1592	10758.59	10758.59	19991901300012O1
INTERNATIONAL ALLIANC	19980801	20000616	19USC1592	1000.00	1000.00	19992402300112O1
CAL PACIFICO OF CALIF	19930701	20000309	19USC1592	4502.90	4502.90	19992501300061O1
ASTEC AMERICAN, INC.	19990101	20000516	19USC1592	297.99	297.99	19992501300067O1
LUNA-CADENA	19970429	20000214	19USC1592	5120.00	5120.00	19992501300074O1
ADAMS VEGETABLE OIL,	19981123	20000315	19USC1592	1492.29	1492.29	19992604300021O1
FORD MOTOR COMPANY	19990127	20000127	19USC1592	1254.00	313.50	19992604300067O1
AVNET ELECTRONICS MAR	19990903	20000522	19USC1592	125000.00	6250.00	19992605300023O1
KO	19980707	20000420	19USC1592	1164.00	1164.00	19992722030000O1
WINTON TRADING COMPAN	19960117	20000106	19USC1592	3032.00	3032.00	19992809300092O1
MBM COMANY	19980121	20000105	19USC1592	3756.00	939.00	19992809300165O1
SUN MICROSYSTEMS, INC	19980810	20000119	19USC1592	2351.68	2351.68	19992809300350O1
ROBINSON TECHNICAL PR	19990729	20000209	19USC1592	3761.48	2821.00	19992904300195O1
COSTCO WHOLESALE	19960101	20000427	19USC1592	157383.19	157383.19	19993001300124O1

VIOLATOR-NAME	VIOLATION-DTE	CASE-CLOSED-DTE	CITATION	PENALTY-ASSESSED	TOT-COLLECTED	FPF-CASE-NUMBER
SHOWA ALUMINUM CORP O	19980226	20000420	19USC1592	—	19397.93	1999300130065801
PERFORMANCE DEVOLOPME	19990319	20000203	19USC1592	2098.76	524.69	1999300430008401
GOLDEN BOY FOODS INC	19990728	20000616	19USC1592	1000.00	350.00	1999300430012801
COWLEY FOREST PRODUCT	19990728	20000303	19USC1592	8230.00	2469.00	1999331000022001
DIAMOND AUTOMOTIVE SP	19990801	20000127	19USC1592	3036.00	759.00	1999331030084901
COWLEY FOREST PRODUCT	19990806	20000303	19USC1592	7880.00	4728.00	1999331830001701
YHS BEVERAGE CANADA	19981130	20000303	19USC1592	500.00	150.00	1999340130009001
HAYBUSTERS	19981025	20000308	19USC1592	3862.00	965.60	1999340130010501
NORMAN G JENSEN INC	19990204	20000605	19USC1592	1220.00	100.00	1999340130011801
DIAMOND B FARMS	19990420	20000202	19USC1592	144.60	100.00	1999340130019501
ROTEN	19990619	20000605	19USC1592	4500.00	1125.00	1999340130019801
THOMAS	19990714	20000601	19USC1592	2200.00	350.00	1999340130021001
G-7 WELCOMING COMMITT	19990812	20000105	19USC1592	172.00	100.00	1999340130023101
LEXAR CORPORATION	19990807	20000601	19USC1592	102.00	102.00	1999340130023301
A.N. DERINGER, INC.	19971130	20000509	19USC1592	12297.00	250.00	1999380130006101
VOLVO TRUCKS NORTH AM	19970101	20000224	19USC1592	5120.62	5120.62	1999380130025301
FORD MOTOR COMPANY	19970101	20000201	19USC1592	10028.01	10028.01	1999380130028401
WILLSON INTERNATIONAL	19980526	20000406	19USC1592	11842.06	250.00	1999380130028601
MARTINI	19990429	20000523	19USC1592	7386.00	7386.00	1999390100031401
MARTINI	19990429	20000523	19USC1592	7680.00	7680.00	1999390100031501
NIELSEN	19990710	20000221	19USC1592	2507.00	2507.00	1999390100043701
NORTH AMERICAN LIGHTI	19961218	20000118	19USC1592	1291.51	1291.51	1999390130002501
MOTOROLA ENERGY PRODU	19950207	20000114	19USC1592	3146.85	3146.85	1999390130002801
WATSON FOODS CO	19980708	20000320	19USC1592	1886.00	1886.00	1999390130007701
GRIFFITH LABS USA INC	19980605	20000510	19USC1592	1998.00	1998.00	1999390130007801
CERESTAR	19980529	20000620	19USC1592	—	2977.50	1999390130007901
ROQUETTE AMERICA INC	19980607	20000523	19USC1592	1746.00	1746.00	1999390130008001
AMERICAN SHOWA INC	19910701	20000512	19USC1592	61573.24	61573.24	1999410130006701
CERESTAR USA	19980609	20000620	19USC1592	—	1489.00	1999410230001401
KFD SALES AND SERVICE	19990330	20000428	19USC1592	3511.55	3511.55	1999410230002601
KAL KAN FOODS, INC.	19980602	20000428	19USC1592	—	35000.00	1999410330002001
HITACHI AUTOMOTIVE PR	19980824	20000414	19USC1592	2554.01	2554.01	1999411530000301
SOUTHERN GRAPHIC	19971008	20000105	19USC1592	1013.29	1013.29	1999411530000501
NEW BUFFALO CORPORATI	19961016	20000201	19USC1592	3904.62	3904.62	1999450330001001
PROCTOR & GAMBLE MANU	19990225	20000201	19USC1592	0.00	174.49	1999450330002201
BESTFORM INC.	19990205	20000114	19USC1592	738926.50	738926.50	1999470130011801
THE DAILY PLANET COMP	19970101	20000211	19USC1592	27722.83	27722.83	1999470130017201
NINE WEST GROUP	19970101	20000202	19USC1592	1077.56	1077.56	1999470130021901
WACOAL AMERICA, INC.	19990415	20000121	19USC1592	80770.76	80770.76	1999470130022701
WILKE-RODRIGUEZ	19970101	20000522	19USC1592	11776.57	11776.57	1999470130026501
BOUNDLESS TECHNOLOGIE	19990526	20000524	19USC1592	4280.81	4280.81	1999470130033101
PITNEY BOWES INC	19950101	20000128	19USC1592	37150.16	37150.16	1999470130047001

VIOLATOR-NAME	VIOLATION-DTE	CASE-CLOSED-DTE	CITATION	PENALTY-ASSESSED	TOT-COLLECTED	FPF-CASE-NUMBER
SCHERING PLOUGH CORPO	19931104	20000331	19USC1592	15317.18	15317.18	1999470130049701
FORD MOTOR COMPANY	19970131	20000223	19USC1592	1720.06	1720.06	1999470130050201
CHRISTIE'S INC.	19980621	20000203	19USC1592	5166.19	5166.19	1999470130052801
LERON INC.	19940715	20000406	19USC1592	14504.92	14504.92	1999470130054301
SOTHEBY'S INC.	19931019	20000609	19USC1592	5937.84	5937.84	1999470130059801
SUDINI IMPORTS LTD.	19981101	20000410	19USC1592	5337.01	5337.01	1999470130066601
LIVING DESIGNS FURNIT	19981029	20000427	19USC1592	3741.44	1870.72	1999490930019101
PROCTER & GAMBLE MFG	19981028	20000128	19USC1592	24511.00	24511.00	1999530130019501
CARRADINE	19981224	20000413	19USC1592	909.00	568.00	1999530130019601
CHAMPAGNE IMPORTS INC	19990405	20000324	19USC1592	15000.00	15000.00	1999530130046701
PHILLIPS PETROLEUM CO	19990416	20000403	19USC1592	14346.60	14346.60	1999530130058501
NICHIMEN AMERICA INC.	19990211	20000217	19USC1592	1840.41	1840.41	1999530130059301
HILAL ENTERPRISES	19990407	20000110	19USC1592	756.00	472.00	1999530930003701
TOM MACDONALD TRUCKIN	20000104	20000116	19USC1592	1000.00	1000.00	2000010630001101
ANNAPOLIS VALLEY PEAT	20000207	20000601	19USC1592	1000.00	1000.00	2000010630002201
MURPHY	20000210	20000228	19USC1592	1000.00	1000.00	2000010630002301
CURRIE	20000211	20000331	19USC1592	1000.00	1000.00	2000010630002401
SCULLY	20000308	20000403	19USC1592	1000.00	1000.00	2000010630002501
RUFFNER	20000324	20000405	19USC1592	2800.00	280.00	2000011500003701
MCDERMID	20000611	20000619	19USC1592	14000.00	500.00	2000011500006401
AMERICAN IRON & METAL	19960812	20000131	19USC1592	244.00	244.00	2000020130000101
AMERICAN IRON & METAL	19991124	20000505	19USC1592	366.00	366.00	2000020130000801
INTREX, LLC	19990517	20000602	19USC1592	9573.35	9573.35	2000040130006201
BOSE CORPORATION	19950428	20000127	19USC1592	5248.15	5248.15	2000040130007601
SIPEX CORPORATION	19950301	20000218	19USC1592	3015.71	3015.71	2000040130013201
DESPEC SUPPLIES INC	19980209	20000113	19USC1592	1572.56	1572.56	2000071230000601
MILLENIUM BLUES	19990607	20000612	19USC1592	1410.72	1410.72	2000071230000801
GOURMET BAKER INC	19980903	20000303	19USC1592	1466.23	1466.23	2000071230001001
NESTLE USA INC.	19971007	20000317	19USC1592	1493.40	1493.40	2000071230001701
POWER BATTERY COMPANY	19990910	20000421	19USC1592	1439.28	1439.28	2000071230003901
AMERICAN FAST PRINT	19990719	20000512	19USC1592	—	1788.17	2000071230004101
IVACO ROLLING MILLS L	19960409	20000412	19USC1592	2066.24	2066.24	2000071230004401
HIBON INC	19980123	20000516	19USC1592	632.86	632.86	2000071230004801
S.A.F. TRANSPORT	19991003	20000128	19USC1592	1000.00	1000.00	2000071530000101
BRAUN INC.	19981207	20000330	19USC1592	3721.96	320.16	2000090130001701
FORD MOTOR COMPANY	19970917	20000131	19USC1592	5347.46	5347.46	2000090130005301
ISUZU MOTORS LIMITED	19980808	20000503	19USC1592	—	1744.05	2000130330003201
KRUPP HOERSCH	19950428	20000413	19USC1592	—	13987.69	2000130330004601
MOEN INCORPORATED	19960925	20000314	19USC1592	6820.35	6820.35	2000140130001701
RACK ROOM SHOES	19980302	20000119	19USC1592	4481.84	4481.84	2000151230000701
RACK ROOM SHOES	19981005	20000119	19USC1592	123.86	123.86	2000151230000801
KOYO CORPORATION OF U	19960916	20000307	19USC1592	3993.72	3993.72	2000160130019901

VIOLATOR-NAME	VIOLATION-DTE	CASE-CLOSED-DTE	CITATION	PENALTY-ASSESSED	TOT-COLLECTED	FPF-CASE-NUMBER
INA USA CORPORATION	19940111	20000208	19USC1592	22358.18	22358.18	2000160130021201
ADIDAS AMERICA, INC	19941105	20000201	19USC1592	215488.00	215488.00	2000170330001701
GULFSTREAM AEROSPACE	19930222	20000407	19USC1592	7577.39	7577.39	2000170330002401
E.I.DUPONT DE NEMOURS	19970417	20000619	19USC1592	2359.00	2359.00	2000170330004201
CALSONIC NORTH AMERIC	19971214	20000518	19USC1592	1687.00	1687.00	2000170330004401
THE HOME DEPOT, INC.	19970108	20000524	19USC1592	604.64	604.64	2000170330005101
ADIDAS AMERICA, INC.	19950225	20000403	19USC1592	153506.71	153506.71	2000170430000201
CLUETT, PEABODY AND C	19940531	20000229	19USC1592	28888.54	28888.54	2000170430000301
TIMBERJACK CORPORATIO	19940109	20000419	19USC1592	16018.00	16018.00	2000170430007901
ETHICON INC	19961224	20000609	19USC1592	12995.00	12995.00	2000170430008901
WIKA INSTRUMENT CORP	19940901	20000524	19USC1592	13940.63	13940.63	2000170430011801
GENERAL ELECTRIC CO.	20000113	20000114	19USC1592	262.00	262.00	2000230230001501
W.E.T. (TEXAS)	20000121	20000124	19USC1592	259.00	259.00	2000230230001601
FOAMEX	20000330	20000405	19USC1592	542.00	542.00	2000230230001901
C.N.I.	20000407	20000410	19USC1592	459.00	459.00	2000230230002001
KOSTAL OF AMERICA, IN	19930101	20000124	19USC1592	17509.49	17509.49	2000230430014401
SONY MAGNETIC PRODUCT	19930202	20000114	19USC1592	56337.57	56337.57	2000230430014501
KRUPS NORTH AMERICA,	19960213	20000503	19USC1592	17167.00	17167.00	2000230430015901
RUBIO ARANA	20000106	20000403	19USC1592	231.88	231.88	2000230430019201
HEWLETT PACKARD COMPA	19960814	20000505	19USC1592	1545.00	1545.00	2000230430034201
GE ENGINE SERVICES-MC	19970901	20000613	19USC1592	205.00	205.00	2000230530009801
TRW SAFETY SYTEMS, IN	19970304	20000515	19USC1592	1000.00	1000.00	2000230530010001
FRITZI CALIFORNIA, IN	19990811	20000405	19USC1592	2995.00	2995.00	2000240230000901
BEST BORDER CARGO INC	19991022	20000504	19USC1592	3121.20	781.48	2000240230006501
SINGLE SOURCE APPAREL	20000108	20000113	19USC1592	1000.00	1000.00	2000240230006701
RICH AND ME INC.	19991201	20000420	19USC1592	1425.60	1425.60	2000240230009901
L'KORAL INDUSTRIES, I	19990608	20000410	19USC1592	861.26	861.26	2000250130005801
TRANSPORTES PIMENTEL	19980223	20000207	19USC1592	2500.00	100.00	2000250130005901
JACK B KELLY	19991221	20000207	19USC1592	1000.00	1000.00	2000250730001201
PIRAMIDE AUTOMATRIZ/G	20000530	20000621	19USC1592	650.00	650.00	2000250730005901
AL HARRISON & CO. DIS	19990409	20000118	19USC1592	1217.00	304.00	2000260430002001
GLOBAL SALES CO., LLC	19990423	20000518	19USC1592	1549.00	706.00	2000260430002101
C.T. PRODUCE, INC.	19990420	20000125	19USC1592	2326.00	465.00	2000260430002401
SHIPLEY SALES SERVICE	19990420	20000216	19USC1592	5766.00	2883.00	2000260430002501
TRIUNFO-MEX INC.	19991122	20000327	19USC1592	10533.00	2107.00	2000260430004701
ALLIEDSIGNAL EQUIPMEN	20000114	20000322	19USC1592	1600.00	800.00	2000260530000401
BROWN & WILLIAMSON TO	19960226	20000428	19USC1592	2171.77	2171.77	2000270430118501
ARCHTEK AMERICA CORPO	19970122	20000425	19USC1592	5402.06	402.06	2000270430122101
SCEPTRE TECHNOLOGIES,	19950105	20000516	19USC1592	12529.62	12529.62	2000270430127201
BROTHER INTL CORP	19950522	20000627	19USC1592	10911.94	10911.94	2000270430134301
CHOW,WING KIT & TAM,H	20000428	20000508	19USC1592	5371.00	5371.00	2000280130001101
SHARP ELECTRONICS COR	19930401	20000111	19USC1592	620.60	620.60	2000280930001601

VIOLATOR-NAME	VIOLATION-DTE	CASE-CLOSED-DTE	CITATION	PENALTY-ASSESSED	TOT-COLLECTED	FPF-CASE-NUMBER
INTEL CORPORATION	19961227	20000203	19USC1592	1465.38	1465.38	2000280930015601
JOE BOXER CORP/HOSER	19950101	20000224	19USC1592	2701.52	2701.52	2000280930016801
HYUNDAI ELECTRONICS A	19950101	20000302	19USC1592	31520.30	31520.30	2000280930018601
MEDISYSTEMS CORPORATI	19940701	20000324	19USC1592	2737.88	2737.88	2000280930020601
ST. CHARLES TRADING C	19930101	20000309	19USC1592	4701.01	4701.01	2000280930021301
TROPICANA PRODUCTS IN	19981101	20000516	19USC1592	1081.18	1081.18	2000280930024101
NATIONAL SEMICONDUCTO	19950702	20000501	19USC1592	1729.18	1729.18	2000280930030701
LUMILITE DIV. OF BURN	19970712	20000307	19USC1592	941.95	941.95	2000290430010501
RINGLACE PRODUCTS INC	19991126	20000515	19USC1592	4476.72	1119.18	2000290430010601
NISSHO-IWAI AMERICAN	19970523	20000218	19USC1592	103621.98	99690.42	2000300130016901
NUFARM AMERICA, INC.	19970221	20000105	19USC1592	93946.71	93946.71	2000300130034601
SAN MAR CORP	19970201	20000331	19USC1592	31000.00	31000.00	2000300130065401
AQUA STAR	19980829	20000420	19USC1592	529.17	529.17	2000300130085901
TREND-TEX FABRICS INC	19971105	20000430	19USC1592	5127.34	5127.34	2000300430000801
WEIRING	19991208	20000411	19USC1592	5000.00	250.00	2000300430002501
POLYGRAM MERCHANDISIN	19971212	20000421	19USC1592	2455.00	2455.00	2000300430003501
STATPOWER TECHNOLOGIE	19960801	20000430	19USC1592	3940.02	3940.02	2000300430003701
HEWLETT-PACKARD COMPA	19950315	20000424	19USC1592	7281.30	7281.30	2000319530017001
ALEXANDER NADANER IMP	19950412	20000607	19USC1592	7203.47	7203.47	2000319530111401
STRAIGHT TRADING	19961003	20000607	19USC1592	3513.94	3513.94	2000319530111501
RUDOLF FRIEDMAN	19970408	20000607	19USC1592	241.11	241.11	2000319530111601
MARK STROH	19991112	20000530	19USC1592	1224.00	306.00	2000320130000801
TRANSPORT AMERIQUE IN	19991013	20000314	19USC1592	500.00	500.00	2000330230000701
RHINO TRUCKING	20000210	20000412	19USC1592	500.00	500.00	2000330230002301
DUNCAN HILL ROD & GUN	19991217	20000306	19USC1592	491.68	491.68	2000330430000301
JOURNET LACOUNT ENTER	20000104	20000508	19USC1592	520.96	195.36	2000330730000701
KLASSEN	20000406	20000419	19USC1592	5000.00	2500.00	2000330800001301
BARHAM	20000406	20000419	19USC1592	5000.00	2500.00	2000330800001401
LIAISON DATA RESEARCH	19991216	20000105	19USC1592	5984.00	1196.00	2000331000004201
BARTLETT-GIBSON	19991221	20000105	19USC1592	183.00	183.00	2000331000004601
ORANGE TKO INDUSTRIES	20000105	20000113	19USC1592	3013.28	602.66	2000331000005301
A.N. DERINGER INC	20000107	20000112	19USC1592	340.00	100.00	2000331000005601
DWAYNE AIR LTD	20000109	20000114	19USC1592	7700.00	1540.00	2000331000005701
PIPING SPECIALTIES	20000113	20000121	19USC1592	204.00	320.00	2000331000005901
XOMOX-TUFLINE	20000117	20000127	19USC1592	764.00	152.80	2000331000006101
BULKFLOW TECHNOLOGIES	20000119	20000121	19USC1592	2420.00	484.00	2000331000006201
CANADIAN BLOOD SERVIC	20000119	20000127	19USC1592	3392.00	678.40	2000331000006301
CB ENGINEERING LTD	20000125	20000324	19USC1592	840.00	840.00	2000331000006701
M & I TRUCK & EQUIPME	20000125	20000131	19USC1592	29000.00	1450.00	2000331000006801
MADENTEC LIMITED	20000126	20000204	19USC1592	4545.00	227.25	2000331000007101
ABB VETCO GRAY CANADA	20000129	20000207	19USC1592	21338.02	1066.90	2000331000007301
CSI INTERNATIONAL INC	20000203	20000207	19USC1592	3688.05	737.61	2000331000007601

VIOLATOR-NAME	VIOLATION-DTE	CASE-CLOSED-DTE	CITATION	PENALTY-ASSESSED	TOT-COLLECTED	FPF-CASE-NUMBER
SKYLARK COMPUTER SALE	20000210	20000324	19USC1592	5220.00	5220.00	2000331000007901
MILNE & CRAIGHEAD	20000216	20000224	19USC1592	951.08	190.22	2000331000008101
TEET VIDEO	20000217	20000414	19USC1592	100.00	100.00	2000331000008501
HERITAGE HARLEY DAVID	20000218	20000314	19USC1592	680.00	163.20	2000331000008701
PAMCO DIV. OF ENERFLE	20000219	20000228	19USC1592	340.00	100.00	2000331000009601
TIDELAND SIGNAL CANAD	20000218	20000228	19USC1592	778.00	155.60	2000331000010001
NEW WAY SALES	20000316	20000331	19USC1592	5440.00	1088.00	2000331000011401
VALLEY BLADES LTD	20000324	20000410	19USC1592	1290.00	258.00	2000331000012201
KEELEY	19991230	20000104	19USC1592	5000.00	500.00	2000331030018001
PARKER	19991231	20000104	19USC1592	5000.00	500.00	2000331030018101
ENGINEERED PROFILES	20000211	20000218	19USC1592	136.98	136.98	2000331030026501
STILL EAGLE PLANETARY	20000210	20000223	19USC1592	100.00	100.00	2000331030027301
COASTAL EQUIPMENT	20000222	20000224	19USC1592	4000.00	1000.00	2000331030028601
SHREDFAST INC.	20000224	20000303	19USC1592	100.00	100.00	2000331030029401
A N DERINGER	20000224	20000229	19USC1592	320.00	320.00	2000331030029601
GRIS GUN	20000308	20000310	19USC1592	—	435.35	2000331030031901
PATTERSON DENTAL	20000308	20000310	19USC1592	620.80	157.20	2000331030033101
FLEMING MOTORS	20000310	20000512	19USC1592	1840.00	1840.00	2000331030033601
FLOW CONTROL COMPONEN	20000311	20000317	19USC1592	178.50	178.50	2000331030033701
WEATHERFORD PC PUMP L	20000313	20000331	19USC1592	128.50	128.50	2000331030033801
AMETEK WESTERN RESEAR	20000309	20000330	19USC1592	100.00	100.00	2000331030035901
WERMAC ELECTRIC LTD.	20000311	20000324	19USC1592	2106.80	358.16	2000331030036201
NORMAN G JENSEN	20000321	20000616	19USC1592	—	882.87	2000331030036401
RED-DISTRIBUTORS LTD	20000322	20000324	19USC1592	696.00	348.00	2000331030036501
KEN-NAN AUTOMOTIVE EQ	20000323	20000331	19USC1592	272.00	136.00	2000331030037501
BRANDT TRACTOR	20000325	20000328	19USC1592	2100.00	210.00	2000331030038501
CRAWLER SALES LIMITED	20000331	20000404	19USC1592	—	1250.00	2000331030039401
NAFTA TRADING CORP	20000419	20000421	19USC1592	3300.00	825.00	2000331030043401
CUTLER-HAMMER	20000420	20000602	19USC1592	202.50	202.50	2000331030043501
ZANTHIC TECHNOLOGIES	20000503	20000530	19USC1592	300.00	300.00	2000331030048001
TECO-WESTINGHOUSE MOT	20000504	20000508	19USC1592	728.34	728.34	2000331030048101
MAGNA ENGINEERING SAL	20000504	20000508	19USC1592	—	100.00	2000331030048201
SWENSON INC	20000508	20000512	19USC1592	3711.86	927.95	2000331030048401
CROSS BRODER TRADING	20000224	20000526	19USC1592	250.00	250.00	2000331030050501
POTASH CORP. OF SASKA	20000601	20000615	19USC1592	300.00	150.00	2000331030053001
CAM ENS	20000606	20000620	19USC1592	140.00	100.00	2000331030054401
STRONGCO EQUIPMENT	20000612	20000623	19USC1592	453.50	453.50	2000331030055801
REED	20000614	20000628	19USC1592	6460.00	1615.00	2000331030056001
WINDFALL COMPRESSOR S	20000620	20000626	19USC1592	100.00	100.00	2000331030057301
ART BOOKBINERY	19991206	20000329	19USC1592	342.00	100.00	2000340130002801
CROWN CONSTRUCTION EQ	20000214	20000502	19USC1592	5000.00	250.00	2000340130004301
NRG TELERESOURCES	20000225	20000620	19USC1592	798.00	200.00	2000340130004501

VIOLATOR-NAME	VIOLATION-DTE	CASE-CLOSED-DTE	CITATION	PENALTY-ASSESSED	TOT-COLLECTED	FPF-CASE-NUMBER
ENSZ	20000505	20000627	19USC1592	500.00	100.00	2000340330005701
SPEARING SERVICE LTD	20000112	20000407	19USC1592	500.00	250.00	2000341930000101
SASS	20000407	20000407	19USC1592	1006.00	100.00	2000350100010401
POLARIS INDUSTRIES, I	19960101	20000331	19USC1592	36112.47	36112.47	2000350130000701
MASSTORAGE SYSTEMS, I	19991012	20000512	19USC1592	500.00	500.00	2000350130001401
ABITIBI-CONSOLIDATED	19991208	20000215	19USC1592	12500.00	500.00	2000360430000301
PLACER DOME TECHNICAL	19991210	20000303	19USC1592	23820.00	500.00	2000360430000401
AMIN	20000125	20000418	19USC1592	5000.00	500.00	2000380100036501
DAIMLER CHRYSLER	19940101	20000407	19USC1592	2480986.33	2480986.33	2000380130004601
EUCLID-HITACHI HEAVY	19991130	20000323	19USC1592	1042.47	1042.47	2000380130010501
VARI-FORM INC.	19940101	20000303	19USC1592	1012.98	1012.98	2000380130013801
LONG	20000216	20000229	19USC1592	16638.00	1673.43	2000390100026201
ASC INDUSTRIES INC	19941219	20000526	19USC1592	1115.92	1115.92	2000410130005001
WARTSILA NSD NORTH AM	19940109	20000106	19USC1592	5363.10	5363.10	2000460130010801
MAZDA MOTOR OF AMERIC	19980801	20000124	19USC1592	4808.69	4808.69	2000460130017301
BECTON DICKINSON AND	19990405	20000621	19USC1592	710.09	710.09	2000460130040401
GARRITY INDUSTRIES IN	19940101	20000424	19USC1592	9050.38	9050.38	2000470130043801
JEANS COLLECTIBLES, L	19920101	20000428	19USC1592	—	25000.00	2000470130046401
NINE WEST DISTRIBUTIO	19960101	20000607	19USC1592	7997.01	7997.01	2000470130058001
JUN RANG LU DBA	19991227	20000502	19USC1592	639.60	639.60	2000490930007401
MIDDLETON	19991113	20000415	19USC1592	5000.00	500.00	2000520100006601
SERVITRANS INC.	19990917	20000410	19USC1592	1900.00	475.00	2000530130000101
FINE ART SALES INC.	19991014	20000215	19USC1592	3198.00	3198.00	2000530130004701
CLARIANT (FRANCE) S.A	19990930	20000510	19USC1592	342.57	342.57	2000530130007601
BUDDY ZIESE BIT SALES	20000206	20000323	19USC1592	340.60	340.60	2000530130029901
BETA COMPANY	20000210	20000613	19USC1592	4074.84	850.00	2000530130030501
BMC SOFTWARE, INC.	20000208	20000601	19USC1592	7433.60	3717.00	2000530130030601
ABOUT AUSTRALIA USA	19991118	20000127	19USC1592	372.00	372.00	2000550730000401
FORTUNE	20000308	20000406	19USC1592	1662.02	1342.90	2000792500003301
FLYNN	19991208	20000105	19USC1592	500.00	500.00	2000792600006201
SAMUELS	20000110	20000125	19USC1592	500.00	500.00	2000792600015701
PARIS	20000511	20000523	19USC1592	500.00	500.00	2000792600038301
GRAND TOTAL				22149097.43	13395077.45	

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Federal Recycling Program
Printed on Recycled Paper
U.S.G.P.O. 2000-432-394-80072